



Australian Government
Takeovers Panel

TAKEOVERS PANEL

Annual Report 2021–22



TAKEOVERS PANEL

**ANNUAL REPORT
2021–2022**

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12 August 2022

The Hon Dr Andrew Leigh MP
Assistant Minister for Competition, Charities and Treasury
Parliament House
Canberra ACT 2600

Dear Assistant Minister

ANNUAL REPORT 2021–22

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*,
I submit the 2021–22 Annual Report of the Takeovers Panel for presentation to Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Cartel'.

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 2022 of 51 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)
- 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
- 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.

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- annual reports
- legislative resources and other background material relating to mergers and acquisitions
- 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
Chief Executive, 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

The Panel has had another busy year having received 30 applications and 4 requests for a variation of the Panel’s orders, including several high-profile contests for control.

On 19 May 2022 in Melbourne, the Panel held its first in person Panel Day in over two years. Panel Days are important forums which enable the Panel members and executive to discuss recent matters and policy. It was great to see my fellow Panel members face to face and exchange ideas after a busy and intense couple of years. I am looking forward to getting back into a pattern of more regular in person meetings going forward.

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. It is important that the Panel has the opportunity to discuss whether any of these Guidance Notes need to be updated.

The numerous Panel applications in both AusNet Services Limited and Virtus Health Limited received considerable press coverage. In each of these matters, the Panel considered the issue of deal protection measures in the context of an exclusive due diligence process prior to the submission of a binding proposal. Following a discussion at the May 2022 Panel Day, the Panel has decided to consult on an update to Guidance Note 7: Lock-up devices in the 2022–23 financial year.

The Panel also considered association issues in relation to AIMS Property Securities Fund, PM Capital Asian Opportunities Fund and DRA Global Limited. In PM Capital Asian Opportunities Fund and DRA Global Limited the Panel found contraventions of s606 and made declarations and orders. AIMS Property Securities Fund 01 and 02, which were the second and third longest matters (respectively) in Panel history⁴, involved several procedural issues – including receiving statutory declarations from parties late in the proceedings. The Panel often is required to review a considerable body of material to determine whether persons are associated and have contravened the takeovers prohibition

4 If these matters were excluded, the average time from application to decision this year would be 20.9 calendar days.

in section 606 of the Corporations Act. The Panel membership has had a detailed discussion about the use of statutory declarations in AIMS Property Securities Fund and how best to tackle association matters in the future.

The Panel has also discussed how best to deal with disruptive behaviour from parties. The Panel has noticed over the last couple of years that some parties have attempted to disrupt proceedings, including refusing to answer brief questions and making highly emotive (and sometimes irrelevant) submissions. There is a risk that such behaviour can prolong proceedings and undermine the Panel's mandate to decide takeover disputes promptly. One way that the Panel has historically dealt with disruptive parties is to make a costs order against them. The Panel is also considering amending its Procedural Guidelines, Guidance Note 4: Remedies General and its processes generally with the aim of discouraging disruptive behaviour for the good of all parties that come before the Panel.

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. In April 2022, Treasury released a consultation paper seeking submissions about whether the Panel should have a greater role in schemes of arrangement and be given the power to make advance rulings.⁵ While any decision to expand the Panel's jurisdiction is a matter for government, I was pleased to see that Treasury stated that 'Since its inception, the Takeovers Panel has enjoyed a positive reputation for the timeliness of its decision making, its ease and relative affordability of access, and the commercially minded, informal, and non-legalistic approach it takes to resolving disputes'.

At 30 June 2022, the Panel had 51 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 the executive, who have worked tirelessly during the pandemic period. I am pleased that the executive has been able to recruit two additional staff. The executive has been busy working on a new website, which is scheduled to go live in the second half of 2022. The executive has also received expert advice on what cloud-based solutions for document and knowledge management would be suitable to adopt in the 2022–23 financial year. The executive continues to make themselves available to parties who wish to give post matter feedback and to stakeholders generally.

⁵ The Treasury, 'Corporate control transactions in Australia: Consultation on options to improve schemes of arrangement takeover bids, and the role of the Takeovers Panel', April 2022, at page 5.

I am pleased to report on our performance for the 2021-22 financial year.

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

Alex Cartel
President

Panel at a glance 2021–22

Applications

(average 28.9 per year since 1 July 2000)

30

Matters the Panel conducted
proceedings in

(average 53.67% since 13 March 2000)

53.33%

Matters where the Panel
accepted undertakings

3

Matters where the Panel
made declarations and orders

11

Average calendar days between
application and decision

(average 17.1 since 13 March 2000)

25.7

Average calendar days between
decision and publication of reasons

(average 34.4 since 13 March 2000)

47

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
- publishing clear, well-developed guidance.

The Panel’s two main dispute resolution functions are considering whether unacceptable circumstances exist⁶ and reviewing certain decisions of ASIC.⁷

Table 1: The Panel’s dispute resolution functions

	Unacceptable circumstances	Review of ASIC decisions
What	Deciding applications for a declaration of unacceptable circumstances is the main work of the Panel	The Panel may, 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 ⁸
Guidance	Guidance Notes, Procedural Rules, legislative policy of Chapter 6, previous decisions	Regulatory Guides, ASIC policies, reasons for ASIC’s decision, Panel policy

⁶ Section 657A and, if a declaration is made, orders under section 657D.

⁷ Under section 655A and, during a takeover bid, section 673 (see section 656A).

⁸ 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' ⁹	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. ¹⁰ 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 24 applications for a declaration at first instance and six applications for review	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 6.¹¹ It has not made any rules under this power.

The Panel has a power to make Procedural Rules.¹² It published revised Procedural Rules in 2021.

The Panel may decide a matter referred from the Court.¹³ There were no referrals in the current period.

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

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

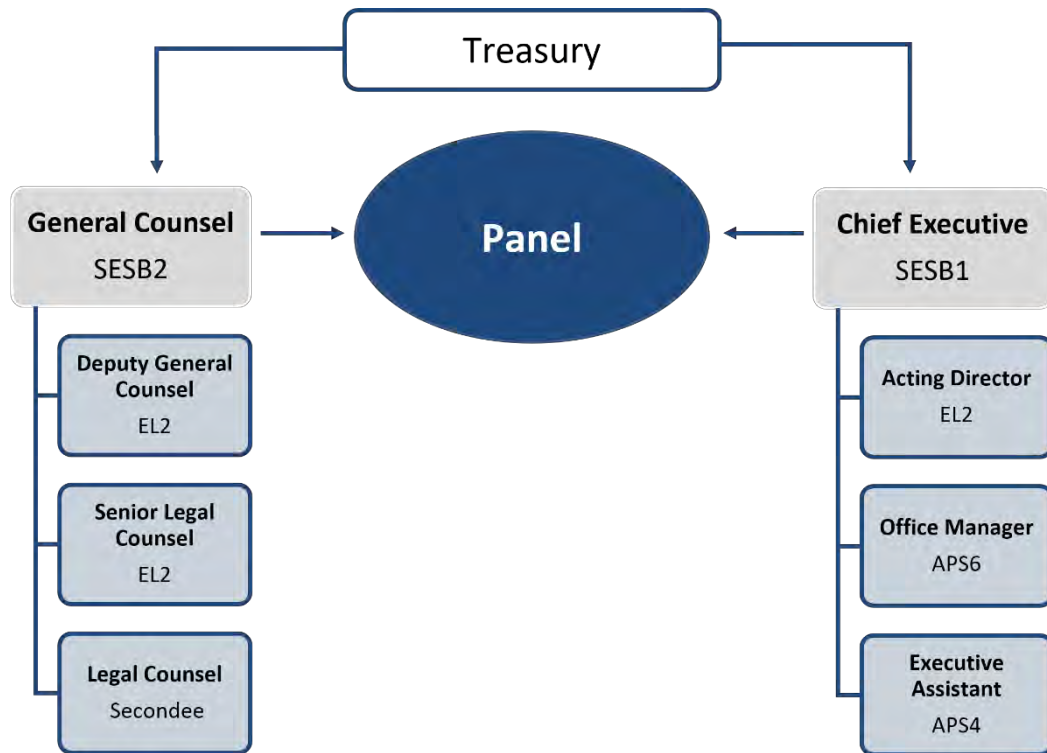
11 Section 658C.

12 Section 195 of the ASIC Act.

13 Section 657EB.

Organisational structure

Chart 1: The Panel's organisation structure



Panel President

Mr Alex Cartel, a member of the Panel, is its President.¹⁴ 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
- participating in reviewing the performance of the executive.

He regularly sits on matters.

¹⁴ Section 173 of the ASIC Act.

Acting Presidents

The following members have been appointed¹⁵ 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
- 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
- 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:

- Chief Executive, Mr Allan Bulman
- General Counsel, Ms Tania Mattei
- Deputy General Counsel, Ms Katrina Fong
- Senior Legal Counsel, Ms Melanie Gilbert (part-time)
- Acting Director, Mr Andre Fontanini

¹⁵ Sections 182(1)(a)&(b) of the ASIC Act.

- Legal Counsel, 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 Michael Van Der Ende (Squire Patton Boggs, Perth), Mr Andrew Bubniw (Baker McKenzie, Melbourne) and Ms Kirsty Hall (DLA Piper, Perth)
- two administrative staff: Ms Karolina Ksiezak as Office Manager and Ms Rebecca Andrewartha as Executive Assistant.

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 2021–22

Reappointments (13)	Appointments (5)	Terms completed (3)
Mr Kelvin Barry	Mr Constantine Boulougouris	Ms Amy Alston
Mr Robin Bishop	Mr James Burchnall	Mr Richard 'Andy' Coupe
Mr Michael Borsky QC	Mr Alberto Colla	Ms Shirley In't Veld
Mr Alex Cartel	Mr Timothy Longstaff	
Mr Bruce Cowley	Mrs Deborah Page AM	
Ms Chelsey Drake		
Ms Marissa Freund		
Ms Elizabeth Hallett		
Ms Denise McComish		
Mr John McGlue		
Mr Bruce McLennan		
Ms Kerry Morrow		
Ms Philippa Stone		

Members are appointed on a part-time basis, usually for three years, by the Governor-General on the nomination of the Minister.¹⁶ 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.¹⁷ A mix of expertise, geographical representation and gender representation is also considered.

¹⁶ Section 172 of the ASIC Act.

¹⁷ Section 172(4A) of the ASIC Act.

Chart 2: Panel members by Profession at 30 June 2022

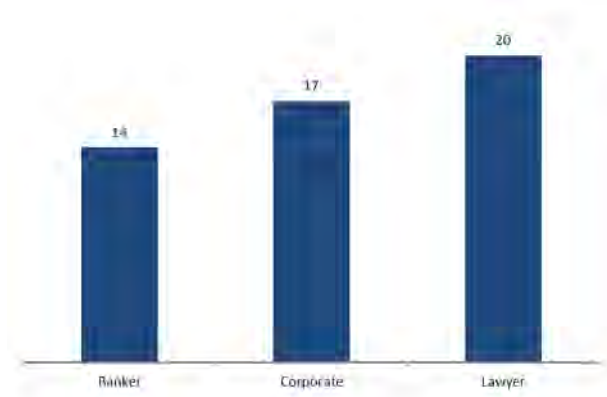


Chart 3: Panel members by Location at 30 June 2022

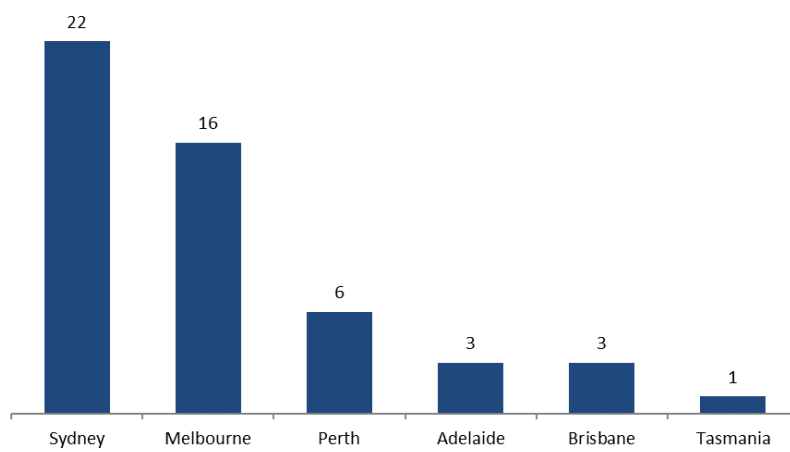
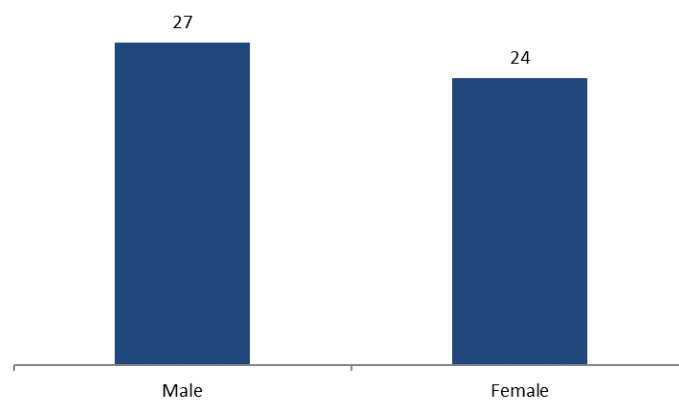


Chart 4: Panel members by Gender at 30 June 2022



Members' biographies (as at 30 June 2022)

Alex Cartel (President) – Head of Banking, Capital Markets and Advisory at Citi Australia & New Zealand. Member since 2015.

Yasmin Allen (Acting President) – Chairman of Digital Skills Organisation and TicToc Online, non-executive director of Cochlear Limited, Santos Limited, ASX Limited and The George Institute for Global Health. Member since 2017.

Kelvin Barry – Managing Director and Co-Head of Advisory and Capital Markets, Australasia 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.

Constantine Boulougouris – Partner at MinterEllison, Co-Head of the M&A/Capital Markets Team. Member since 2022.

James Burchnall – Director at Kain Lawyers, leader of Public M&A and Equity Capital Markets practice. Member since 2022.

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

Alberto Colla – Partner at MinterEllison, member of the Corporations Committee of the Law Council of Australia. Member since 2022.

Bruce Cowley – Non-executive director of Australian Retirement Trust, Sunshine Coast Hospital and Health Service 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 and Elenium Pty Limited, non-executive director of 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, LGIAsuper, Energy Queensland, Shine Justice, member of FIRB. Member since 2018.

Karen Evans-Cullen – Partner at Gilbert + Tobin, 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, Australian Retirement Trust Pty Ltd, Australian Registry Investments Pty Ltd, Clayton Utz 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 and CLV FM. Member since 2015.

Richard Hunt (Acting President) – Senior Adviser at E&P Capital. Member since 2012.

Michelle Jablko (Acting President) – Chief Financial Officer of Transurban Limited. Previously Chief Financial Officer of ANZ Bank and Co-Head of Greenhill Australia. Member since 2014.

Ian Jackman SC – Barrister. Member since 2014.

Anthony Jarvis – Director of Opportuna Legal. Member since 2020.

Christian Johnston – Chairman of 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 at Goldman Sachs. Non-executive director of Baker Heart and Diabetes Institute. Member of the finance committee of the State Library of Victoria. Member since 2021.

Bill Koeck – Chairman of Coronado Global Resources Inc and non-executive director of Poulos Group 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.

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Michael Lishman – Partner at Hamilton Locke. Previously partner of Mallesons Stephen Jaques, Cochrane Lishman and Clifford Chance and a Managing Director at Gresham Advisory Partners. Member since 2020.

Timothy Longstaff – Non-executive director of Inghams Group Limited, Perenti Global Limited, The George Institute for Global Health and Snowy Hydro Limited. Member since 2022.

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, former Chair of the Business Law Section of the Law Council of Australia and its Corporations Committee. Member since 2017.

Denise McComish – Non-executive director of Webjet Limited, Macmahon Holdings Limited, Gold Road Resources Limited, Beyond Blue and Chair, Advisory Board, School of Business and Law at Edith Cowan University. Member since 2013.

John McGlue – Managing Director of Castle Gates Australia. Member since 2019.

Robert McKenzie – Co-managing Director at McKenzie Moncrieff, Chairman of Perron Institute, 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, Financial Services Sector Leader at King & Wood Mallesons, Trustee Melbourne & Olympic Parks, Director Care Australia, Corporations Committee member, Law Council of Australia. Member since 2017.

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

John O’Sullivan —Chairman of Serendipity Capital Holdings Limited. Member 2005-2011 and re-appointed 2018.

Deborah Page AM – Chair of Pendal Group Limited and non-executive director of Growthpoint Properties Australia, Service Stream Limited and Brickworks Limited. Member since 2022.

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 – Joint Global Head, Capital Markets and Partner at Herbert Smith Freehills, Deputy Chair of the Centre for Independent Studies, Advisory Council Member, Asia Society. Member since 2019.

Nicola Wakefield Evans – Non-executive director of Macquarie Group, Lendlease Corporation, Viva Energy Group Limited, 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, Northern Star Resources, Blackmores and Worley. Director of Thiess Group Holdings and 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.

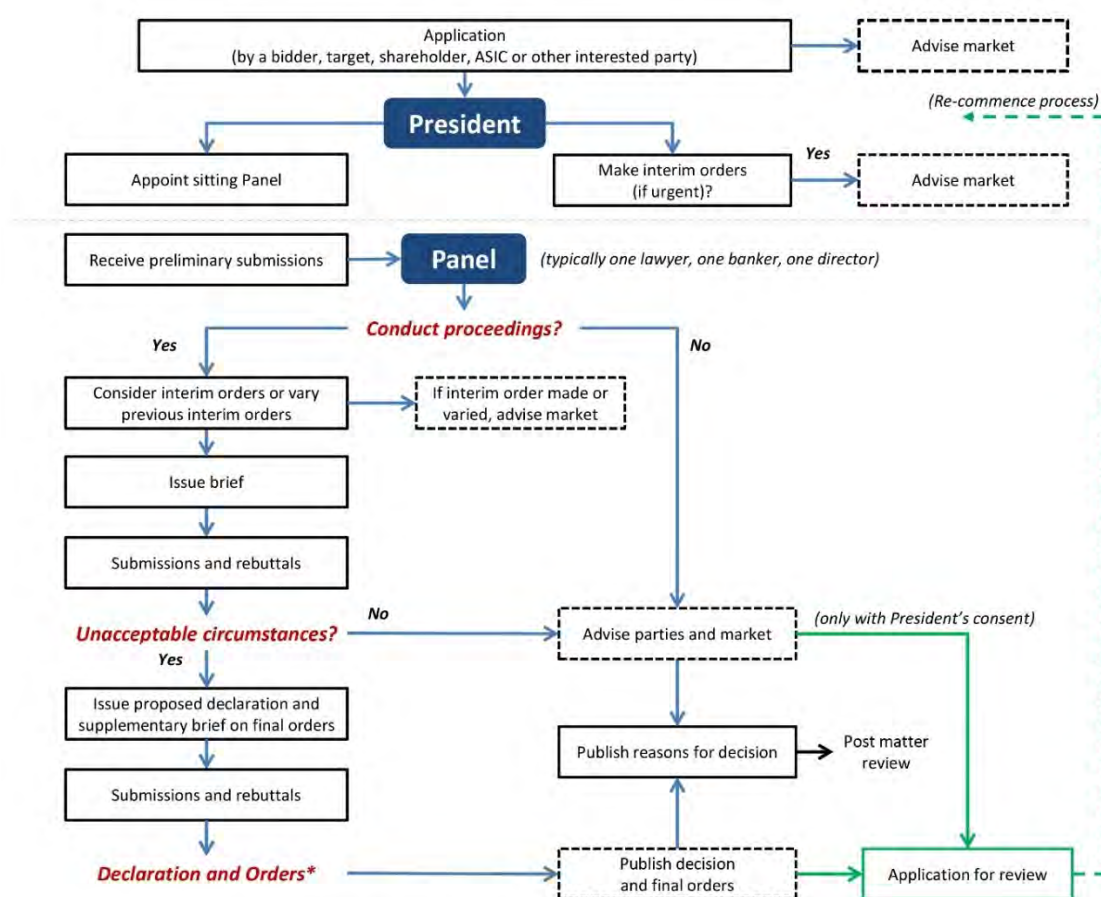
PART 3 – THE WORK OF THE PANEL

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 conference¹⁸ and summon witnesses to give evidence and provide documents.¹⁹ These powers were not used during the 2021–2022 financial year.

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

Appendix 3 lists the applications in the current period (30 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 2021–22

Form of resolution	Number of matters	Comments
Declaration and Orders	11	Circumstances are unacceptable and may be remedied with orders
Declaration and Undertakings ²⁰	0	Potential substitute for orders
Conduct proceedings, no declaration, undertaking/action by party	2	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	3	Panel decides to conduct proceedings, but does not find any unacceptable circumstances
Decline to conduct proceedings, undertaking/action by party	3	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	11	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	0	Applicant withdraws (Panel consent is required)
Total	30	

¹⁸ Regulations 35 to 41 of the ASIC Regulations.

¹⁹ Section 192 of the ASIC Act.

²⁰ Section 201A of the ASIC Act.

Issues in applications

Table 4: Issues in 2021–22

Issue	Number of matters	Name of case
Association/ breach of s606	6	AIMS Property Securities Fund 01 & 02, PM Capital Asian Opportunities Fund Limited 01, 03R and 04R, DRA Global Limited
Bidder conduct	5.5	AusNet Services Limited 02, PM Capital Asian Opportunities Fund Limited 02 (in part), Nex Metals Explorations Ltd 03 & 04R, Virtus Health Limited 03 & 04R
Lock-up devices	5	AusNet Services Limited, Gascoyne Resources Limited 01 & 02R, Virtus Health Limited 01 & 02
Bidder's statement disclosure	4	PM Capital Asian Opportunities Fund Limited 02 (in part), Bullseye Mining Limited 04 (in part), Virtus Health Limited 05 & 06R, Nex Metals Explorations Ltd 06
Target's statement disclosure	3	Nex Metals Explorations Ltd 02, Bullseye Mining Limited 03 (in part), Bullseye Mining Limited 04 (in part), Nex Metals Explorations Ltd 05
Compulsory acquisition	2	Wollongong Coal Limited 02 & 03
Other	4.5	Nex Metals Explorations Ltd (Frustrating action), Bullseye Mining Limited 03 (Intention statements, in part), Smoke Alarms Holdings Limited 03 (Rights issue), Lincoln Minerals Limited (Meeting disclosure), Bullseye Mining Limited 05 (Unregistered share transfers)
Total	30	

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 three 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.



Panel members meeting in Melbourne for the May 2022 Panel Day.

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 members. Sometimes other market participants are invited to be sub-committee 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 no consultation papers.

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 (three post matter reviews were held in 2021–22).

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
- the Panel wants ASIC to consider whether to make an application.²¹

There were no referrals made during the current period.

²¹ 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, 207,897 people visited the Panel's website (up by 158% on last year) and there were 392,222 page views (up by 50% 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 2021–2023.

Risk management

The Panel maintains a risk register and major risks are reviewed monthly.

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 Chief Executive provides monthly reports on financial and operational issues to the President and to the Deputy Secretary, Markets Group in Treasury.

Outcome and program 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 5: Summary resource statement

	Actual budget allocation 2021–22 (\$'000)	Expenses 2021–22 (\$'000)	Balance remaining 2021–22 (\$'000)
Revenue			
Revenue (Department of the Treasury budget allocation and section 74 relevant agency receipts)	2,625	2,410	215
Total resourcing	2,625	2,410	215
		2021–22	2022–23
Average staffing levels (number)		7.2	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)
- procedural rules for fair, timely and cost-effective resolution of disputes.

Financial information

Schedule of Revenues and Expenditures

Table 6: Income statement (Showing Net Cost of Services) (unaudited) for the year ended 30 June 2022

	\$
NET COST OF SERVICES	
Employee expenses	
Salaries	1,224,936
Employer superannuation	175,156
Members' annual retainer and sitting fees	566,276
Total employee expenses	1,966,368
Operating expenses	
Property operating expenses	661
Legal	5,520
Travel	50,601
Consultants	179,850
General Office	21,939
Contractors	129,193
Publications and subscriptions	23,166
Conferences and training	27,968
Grants	5,000
Total operating expenses	443,898
Total expenses incurred to 30 June 2022	2,410,266
Own source income	–
Net cost of services	(2,410,266)
Revenue (Department of the Treasury budget allocation)	2,625,000
Surplus/(Deficit)	214,734

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 2021–22 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.²² All Panel decisions are subject to judicial review.²³ However, most reviews of Panel decisions end with the review Panel process.

See Table 13 for a breakdown of Panel review proceedings.

Government scrutiny

The Panel was not subject to any reports by the ANAO in 2021–22.

The Panel attends hearings of the Senate Standing Committee on Economics Estimates and the Parliamentary Joint Committee on Corporations and Financial Services as required.²⁴

Ombudsman

The Panel was not aware of any reports by the Commonwealth Ombudsman in 2021–22 in relation to the Panel.

Management of human resources

Staffing

At 30 June 2022, the executive consisted of five permanent staff, two non-ongoing staff and one legal secondee.²⁵ Permanent staff are employed under the *Public Service Act 1999* (Cth).

22 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.

23 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.

24 See Parliamentary Joint Committee on Corporations and Financial Services, Report on the 2020-2021 annual reports of bodies established under the ASIC Act. Pages 3 to 5 of the report discuss the Takeovers Panel. In relation to the Committee's request for information relating to review Panel applications, see Table 13.

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

Table 7: Operative staff by classification and gender²⁶

Classification	Full time		Part time	Total
	Male	Female	Female	
APS4		1		1
APS6		1		1
EL2	1	1	1	3
SEB1	1			1
SEB2		1		1
Total	2	4	1	7

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).

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, the agreement was subject to a determination under Section 24(1) of the *Public Service Act 1999* to provide annual wage increases to 4 November 2024. Details and statistics on non-SES remuneration are included in Treasury's Annual Report (Part 3: Management and Accountability).

²⁶ No employees identified themselves as Indigenous at 30 June 2022.

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).

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

Australia's Disability Strategy 2021–2031 is the overarching framework for inclusive policies, programs and infrastructure that will support people with disability to participate in all areas of Australian life. The Strategy sets out where practical changes will be made to improve the lives of people with disability in Australia. 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 have committed to deliver more comprehensive and visible reporting under the Strategy. A range of reports on progress of the Strategy's actions and outcome areas will be published and available at disabilitygateway.gov.au/ads

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 nine contracts that each exceeded \$10,000. These related to three secondment agreements, two contractors, two IT projects, one consulting firm and one online research tool.

Consultants

During 2021–22, the Panel engaged a consulting firm to conduct an analysis of the Panel's business processes and requirements.

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 2021–22, the Panel made a discretionary grant to the Australasian Legal Information Institute (AustLII) of \$5,000 (reported by Treasury on GrantConnect – www.grants.gov.au).

Advertising and market research

The Panel did not undertake any advertising or market research during 2021–22.

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 2021–22.

APPENDIX 1 – PANEL MEMBERS

Table 8: Members of the Panel at 30 June 2022

Mr Alex Cartel (President)	Mr Michael Lishman
Ms Yasmin Allen	Mr Timothy Longstaff
Mr Kelvin Barry	Ms Sandy Mak
Mr Robin Bishop	Mr Ron Malek
Mr Michael Borsky QC	Ms Rebecca Maslen-Stannage
Mr Constantine Boulougouris	Ms Denise McComish
Mr James Burchnall	Mr John McGlue
Ms Stephanie Charles	Mr Robert McKenzie
Mr Alberto Colla	Mr Bruce McLennan
Mr Bruce Cowley	Mr Rory Moriarty
Ms Chelsey Drake	Ms Kerry Morrow
Ms Paula Dwyer	Ms Diana Nicholson
Ms Teresa Dyson	Mr Tony Osmond
Ms Karen Evans-Cullen	Mr John O'Sullivan
Ms Marissa Freund	Mrs Deborah Page AM
Ms Elizabeth Hallett	Ms Tara Page
Ms Tracey Horton AO	Mr Neil Pathak
Mr Richard Hunt	Ms Karen Phin
Ms Michelle Jablko	Ms Sarah Rennie
Mr Ian Jackman SC	Mr John Sheahan QC
Mr Anthony Jarvis	Mr James Stewart
Mr Christian Johnston	Ms Philippa Stone
Ms Kristen Jung	Ms Nicola Wakefield Evans
Ms Marina Kelman	Ms Sharon Warburton
Mr Bill Koeck	Mr David Williamson
Mr Jeremy Leibler	

Table 9: Members appointed to the Panel in 2021–22

Mr Constantine Boulougouris	Mr Timothy Longstaff
Mr James Burchnall	Mrs Deborah Page AM
Mr Alberto Colla	

Table 10: Members who ceased their membership of the Panel in 2021–22

Ms Amy Alston	Ms Shirley In't Veld
Mr Richard 'Andy' Coupe	

APPENDIX 2 – SUB-COMMITTEE MEMBERS

Table 11: Sub-committees

Topic	Sub-committee members	
	Panel member	External member
GN 19 Insider Participation	Mr Alex Cartel (President)	
	Ms Stephanie Charles	
	Ms Karen Evans-Cullen	
	Ms Marissa Freund	
	Mr Bill Koeck	
	Mr Ron Malek	
	Ms Diana Nicholson	
	Mr Neil Pathak	

APPENDIX 3 – PANEL APPLICATIONS

Table 12: Applications received by the Panel in 2021–22²⁷

	Matter No.	Section	Matter name	Decision	Application Date	Decision date
1	2021/06	657A,D	AIMS Property Securities Fund	Conducted proceedings, no declaration	13/08/2021	23/11/2021
2	2021/07	657A,D	AIMS Property Securities Fund 02	Conducted proceedings, no declaration	31/08/2021	23/11/2021
3	2021/08	657A,D	AusNet Services Limited	Declaration and orders	23/09/2021	15/10/2021
4	2021/09	657A,D,E	Nex Metals Explorations Ltd	Declaration and orders	30/09/2021	03/11/2021
5	2021/10	657A,D	AusNet Services Limited 02	Declined to conduct proceedings	01/10/2021	08/10/2021
6	2021/11	657A,D,E	Gascoyne Resources Limited	Declined to conduct proceedings	13/10/2021	22/10/2021
7	2021/12	657A,D,E	PM Capital Asian Opportunities Fund Limited 01	Declaration and orders	15/10/2021	03/12/2021
8	2021/13	657A,D,E	PM Capital Asian Opportunities Fund Limited 02	Conducted proceedings, no declaration	22/10/2021	12/11/2021
9	2021/14	657EA	Gascoyne Resources Limited 02R	Declined to conduct proceedings	25/10/2021	29/10/2021
10	2021/15	657A,D,E	Nex Metals Explorations Ltd 02	Declaration and orders	02/11/2021	30/11/2021
11	2021/16	657A,D,E	Nex Metals Explorations Ltd 03	Declined to conduct proceedings	17/11/2021	19/11/2021

²⁷ Under sections 657C and 657EA. The Panel also received four applications to vary the final orders in each of Keybridge Capital Limited 04, 05 & 06, Nex Metals Explorations Ltd 02, Bullseye Mining Limited 03 and Molopo Energy Limited 03R, 04R & 05R.

Table 12: Applications received by the Panel in 2021–22 (continued)

	Matter No.	Section	Matter name	Decision	Application Date	Decision date
12	2021/17	657EA	Nex Metals Explorations Ltd 04R	Declined to conduct proceedings	23/11/2021	13/12/2021
13	2021/18	657EA	PM Capital Asian Opportunities Fund Limited 03R	Declaration and orders	07/12/2021	07/01/2022
14	2021/19	657EA	PM Capital Asian Opportunities Fund Limited 04R	Declaration and orders	07/12/2021	07/01/2022
15	2022/01	657A,D	Wollongong Coal Limited 02	Declined to conduct proceedings, undertaking	06/01/2022	21/01/2022
16	2022/02	657A,D,E	Bullseye Mining Limited 03	Declaration and orders	06/01/2022	07/02/2022
17	2022/03	657A,D,E	Smoke Alarms Holdings Limited 03	Conducted proceedings, no declaration, action by party	10/01/2022	03/02/2022
18	2022/04	657A,D	Virtus Health Limited	Declaration and orders	02/02/2022	23/02/2022
19	2022/05	657A,D,E	Lincoln Minerals Limited	Declined to conduct proceedings, undertaking	09/02/2022	03/03/2022
20	2022/06	657A,D,E	Bullseye Mining Limited 04	Declaration and orders	28/02/2022	01/04/2022
21	2022/07	657A,D,E	Virtus Health Limited 02	Declined to conduct proceedings	03/03/2022	09/03/2022
22	2022/08	657A,D,E	Nex Metals Explorations Ltd 05	Declaration and orders	18/03/2022	28/04/2022
23	2022/09	657A,D,E	DRA Global Limited	Declaration and orders	21/03/2022	09/05/2022
24	2022/10	657A,D	Wollongong Coal Limited 03	Declined to conduct proceedings	04/04/2022	19/04/2022
25	2022/11	657A,D,E	Virtus Health Limited 03	Conducted proceedings, no declaration, undertaking	07/04/2022	22/04/2022

Table 12: Applications received by the Panel in 2021–22 (continued)

	Matter No.	Section	Matter name	Decision	Application Date	Decision date
26	2022/12	657A,D,E	Bullseye Mining Limited 05	Declined to conduct proceedings	21/04/2022	03/05/2022
27	2022/13	657EA	Virtus Health Limited 04R	Declined to conduct proceedings	22/04/2022	03/05/2022
28	2022/14	657A,D,E	Virtus Health Limited 05	Declined to conduct proceedings	29/04/2022	06/05/2022
29	2022/15	657EA	Virtus Health Limited 06R	Declined to conduct proceedings	10/05/2022	17/05/2022
30	2022/16	657A,D,E	Nex Metals Explorations Ltd 06	Declined to conduct proceedings, action by party	24/05/2022	10/06/2022

Table 13: Outcomes of review applications received by the Panel in 2021–22

	Matter No.	Review matter name	Matter reviewed	Review outcome
1	2021/14	Gascoyne Resources Limited 02R	Gascoyne Resources Limited	Affirmed Panel decision
2	2021/17	Nex Metals Explorations Ltd 04R	Nex Metals Explorations Ltd 03	Affirmed Panel decision
3	2021/18	PM Capital Asian Opportunities Fund Limited 03R	PM Capital Asian Opportunities Fund Limited 01	Affirmed declaration, varied orders
4	2021/19	PM Capital Asian Opportunities Fund Limited 04R	PM Capital Asian Opportunities Fund Limited 01	Affirmed declaration, varied orders
5	2022/13	Virtus Health Limited 04R	Virtus Health Limited 03	Affirmed Panel decision
6	2022/15	Virtus Health Limited 06R	Virtus Health Limited 05	Affirmed Panel decision

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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