



Australian Government

Takeovers Panel

TAKEOVERS PANEL

Annual Report 2022–23

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23 August 2023

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

Dear Assistant Minister

ANNUAL REPORT 2022–23

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, I submit the 2022–23 Annual Report of the Takeovers Panel for presentation to Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Cartel', written in a cursive style.

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 2023 of 52 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).

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.

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
- 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

During the 2022–23 financial year, the Panel consulted on updates to Guidance Note 7: Lock-up devices⁴ and Guidance Note 19: Insider Participation in control transactions. The Panel published the results of these consultations, and issued revised versions of these guidance notes, on 8 August 2023.

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. I would like to thank the executive and the relevant sub-committees for all their work in updating these important guidance notes.

In recent years, there have been examples of target company boards agreeing to exclusivity arrangements without a fiduciary out when providing due diligence access in the non-binding bid stage. The revised Guidance Note 7 provides guidance on when such arrangements may be unacceptable, as well as other aspects in the non-binding bid stage. This is an example of the Panel amending its guidance to address emerging market practices.

The Panel re-launched its website in December 2022. The website now has the capacity for Panel applications to be made online via the website and an enhanced search function. The website also contains a wealth of historical material. I would like to thank Tania Mattei and the executive team for all the work they have put into making the website so user friendly. The executive is now working on further improvements to the website, including an enhanced index of reasons (which will have the capacity to be updated more frequently) and further improvements to the search function.

During the financial year the Panel received 16 applications. While this was materially below the historical average, the Panel conducted proceedings in 68.75% of applications received which was well above the historical average and reflected the complex factual nature of the matters during the year. As a result, the average number of days to decision across all matters was affected. Given the fewer applications, lengthy proceedings (particularly those that involve consideration of a large amount of material and complex facts) can affect the average number of days to decision. For example, in The Market

4 Renamed to Deal protection on 8 August 2023

Herald Limited, the Panel had to review a large quantity of documents, and lack of cooperation from parties, in determining whether certain shareholders were associates. The Panel also conducted a conference and sought an extension of time from the Court under section 657B. If this matter was excluded, the average number of days to decision for the year would be 24.3 as opposed to 29.1 calendar days for all matters.

Completing most matters in less than one month compares favourably with most courts and tribunals both here and overseas. However, it is important for the Panel to continue to find ways to ensure that its decisions are as speedy, fair and correct as possible. The Panel this financial year will review its Procedural Guidelines, Guidance Note 2: Reviewing Decisions, Guidance Note 4: Remedies General and matter procedures to (among other things) discourage disruptive party behaviour, minimise legal costs for parties and streamline decisions to decline to conduct proceedings where appropriate.

The Panel recognises the important role it plays in ensuring the efficient, competitive and informed market for corporate control. Being accessible and transparent to parties in need of its services is central to this. The Panel and the executive are committed to taking further steps to enhance the profile of the Panel so that a wider range of parties are aware of its existence and the role it can play in resolving disputes in a speedy, fair and commercial manner.

When a Panel application is made, I (or an Acting President) usually appoint an investment banker, lawyer and someone with corporate experience from the Panel membership who are free of conflicts to consider the matter. The Courts have on several occasions recognised the Panel members' commercial experience as an important part of the Panel's decision-making process.⁵ Accordingly, it is important for the Panel's operations to have sufficient Panel members with the right balance of experience and diverse backgrounds. At 30 June 2023, the Panel had 52 part-time members, 27 of whom were women.

In March this year the government appointed 8 highly credentialed Panel members and they have already made a strong contribution to the Panel. Over the coming years there will likely be considerable renewal of the Panel membership with many long serving Panel members concluding their third or fourth terms. A focus for the Panel and executive in the 2023–24 financial year will be to ensure that the experience of long-serving Panel members is shared with the broader Panel to ensure a smooth transition of knowledge among the Panel 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.

⁵ *Cemex Australia Pty Ltd v Takeovers Panel* [2009] FCAFC 78 at [81] to [89], quoting extensively from *Attorney-General (Cth) v Alinta Ltd Limited* [2008] HCA 2

Part 1 – Background

The Panel members and I greatly appreciate the support of the executive. The executive continues to make themselves available to parties who wish to give post matter feedback and to stakeholders generally.

The Panel continues to be grateful to the Federal Government and the Department of the Treasury for their commitment to a robust, principles-based Panel regime and for their ongoing support.

I am pleased to report on our performance for the 2022–23 financial year.

A handwritten signature in black ink, appearing to read 'Alex Cartel', written in a cursive style.

Alex Cartel
President

Panel at a glance 2022–23

<p>Applications (average 28.3 per year since 1 July 2000)</p>	16
<p>Matters the Panel conducted proceedings in (average 54.32% since 13 March 2000)</p>	68.75%
<p>Matters where the Panel accepted undertakings</p>	1
<p>Matters where the Panel made declarations and orders *plus one declaration and undertakings</p>	1*
<p>Average calendar days between application and decision⁶ (average 17.4 since 13 March 2000)</p>	29.1
<p>Average calendar days between decision and publication of reasons (average 34.4 since 13 March 2000)</p>	34

⁶ A breakdown of days from application and decision is in Table 4: Time to decision by the Panel, 2022–23.

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 exist⁷ and reviewing certain decisions of ASIC.⁸

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 ⁹
Guidance	Guidance Notes, Procedural Rules, legislative policy of Chapter 6, previous decisions	Regulatory Guides, ASIC policies, reasons for ASIC’s decision, Panel policy

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

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

9 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’ ¹⁰	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. ¹¹ 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 13 applications for a declaration at first instance and three 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 6.¹² It has not made any rules under this power.

The Panel has a power to make Procedural Rules.¹³ It published revised Procedural Rules in 2021.

The Panel may decide a matter referred from the Court.¹⁴ There were no referrals in the current period.

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

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

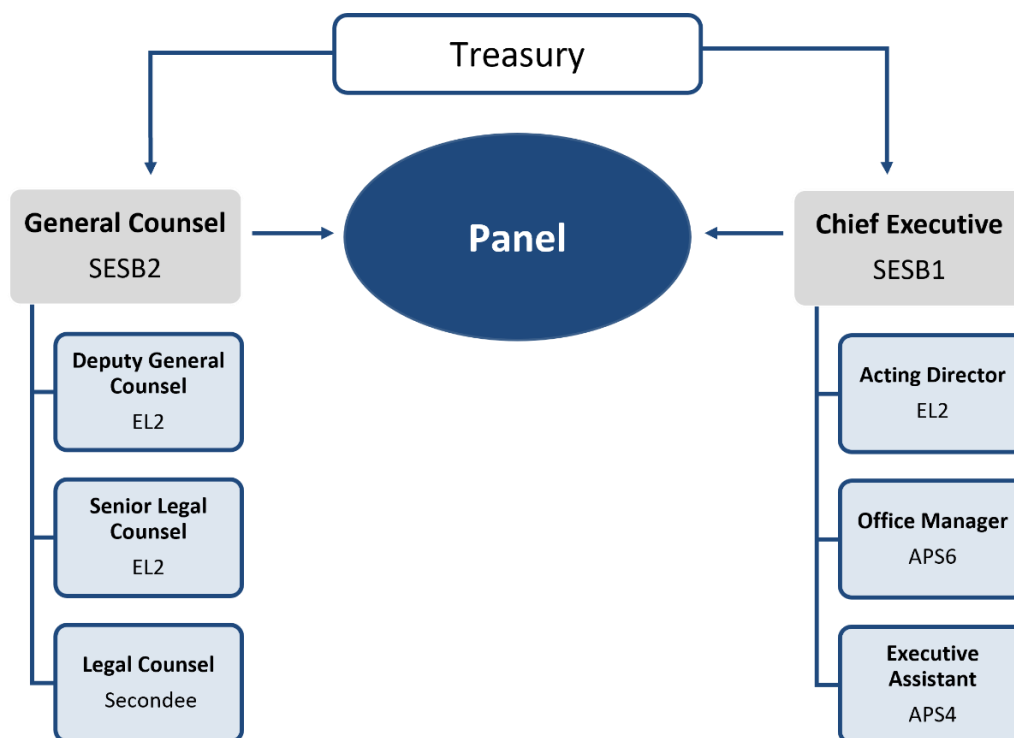
12 Section 658C.

13 Section 195 of the ASIC Act.

14 Section 657EB.

Organisational structure

Chart 1: The Panel's organisation structure



Panel President

Mr Alex Cartel, a member of the Panel, is its President.¹⁵ 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.

¹⁵ Section 173 of the ASIC Act.

Acting Presidents

The following members have been appointed¹⁶ to act as President when the President cannot act:

- Mr Richard Hunt
- Ms Michelle Jablko
- Mr Ron Malek
- Ms Yasmin Allen AM
- 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).

During the financial year the Panel executive comprised:

- Chief Executive, Mr Allan Bulman
- General Counsel, Ms Tania Mattei
- Deputy General Counsel, Ms Katrina Fong (on long term leave)
- Deputy General Counsel, Mr Andrew Bubniw
- Senior Legal Counsel, Ms Melanie Gilbert (part-time)

¹⁶ Sections 182(1)(a)&(b) of the ASIC Act.

- Acting Director, Mr Andre Fontanini
- Legal Counsel, secondees. The Panel’s normal process is to staff its office, in part, with secondees from major law firms. During the financial year, the secondees were Ms Kirsty Hall (DLA Piper, Perth) and Mr Hugh McDonald (MinterEllison, Melbourne). The secondees have ably assisted the executive. The Panel appreciates their contributions and the willing support of their firms.
- two administrative staff: Ms Karolina Ksiezak as Office Manager and Ms Rebecca Andrewartha as Executive Assistant.



The President with the executive: (L to R Top) Hugh McDonald, Melanie Gilbert, Katrina Fong, Alex Cartel, Tania Mattei, Kirsty Hall. (L to R Bottom) Allan Bulman, Rebecca Andrewartha, Karolina Ksiezak, Andre Fontanini.

The Office

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

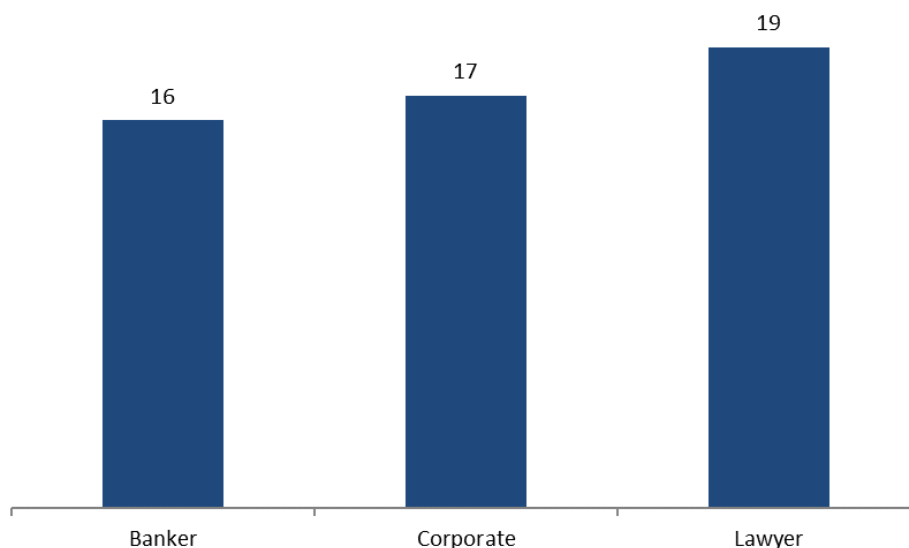
Appointment of Panel members

Table 2: Appointment of Panel members during 2022–23

Reappointments (9)	Appointments (9)	Terms completed (8)
Ms Yasmin Allen AM	Mr Carl Blanchard	Ms Paula Dwyer
Ms Michelle Jablko	Ms Sylvia Falzon	Ms Karen Evans-Cullen
Mr Christian Johnston	Mr Joseph Fayyad	Mr Ian Jackman SC
Ms Kristen Jung	Ms Louise Higgins	Mr Anthony Jarvis
Mr Michael Lishman	Dr Ruth Higgins SC	Mr Robert McKenzie
Ms Rebecca Maslen-Stannage	Ms Emma-Jane Newton	Ms Tara Page
Ms Diana Nicholson	Dr Kristina Stern SC	Dr Kristina Stern SC
Mr Neil Pathak	Ms Erin Tinker	Mr David Williamson
Mr James Stewart	Ms Kate Towey	

Members are appointed on a part-time basis, usually for three years, by the Governor-General on the nomination of the Minister.¹⁷ 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.¹⁸ A mix of expertise, geographical representation and gender representation is also considered.

Chart 2: Panel members by Profession at 30 June 2023



¹⁷ Section 172 of the ASIC Act.

¹⁸ Section 172(4A) of the ASIC Act.

Chart 3: Panel members by Location at 30 June 2023

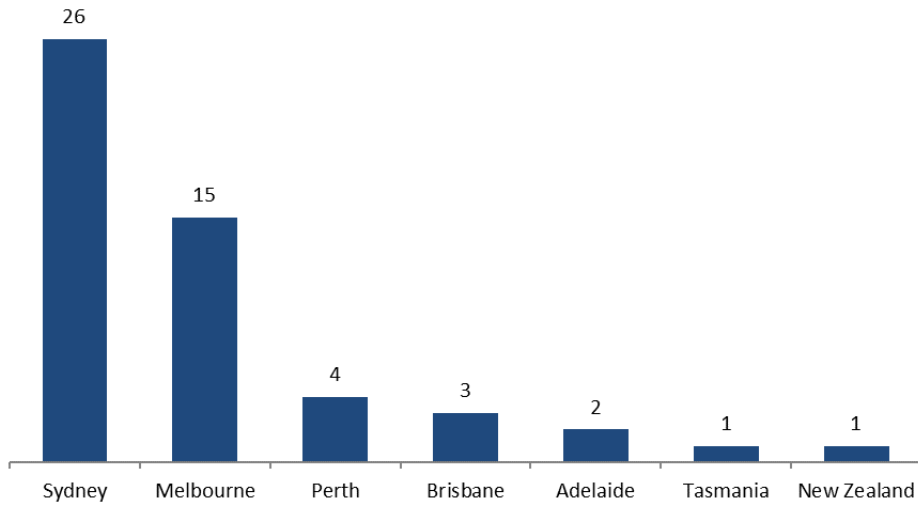
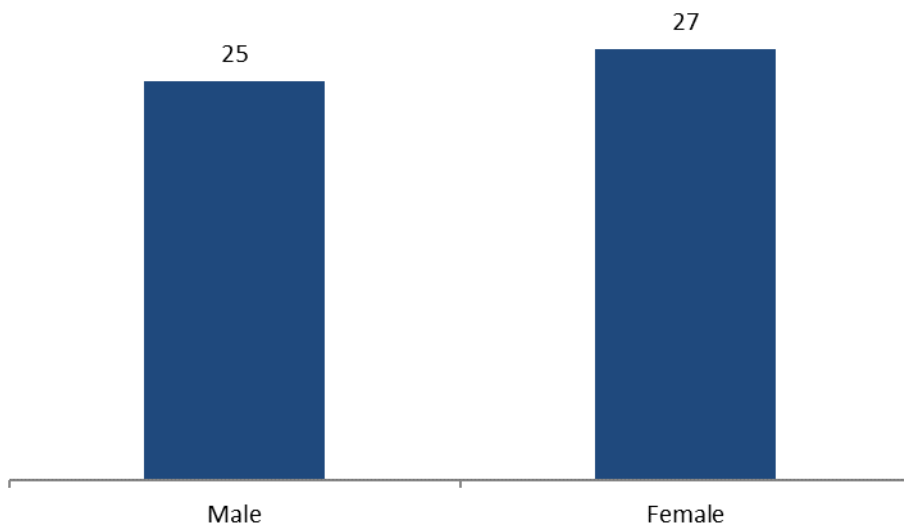


Chart 4: Panel members by Gender at 30 June 2023



Members' biographies (as at 30 June 2023)

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

Yasmin Allen AM (Acting President) – Chairman of Digital Skills Organisation and TicToc Online, non-executive director of QBE Insurance, 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.

Carl Blanchard – Chair of New Zealand Takeovers Panel and Partner at PwC New Zealand. Member since 2022.

Michael Borsky KC – Barrister and National Competition Councillor. 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 since 2022.

Bruce Cowley – Non-executive director of Australian Retirement Trust, Sunshine Coast Hospital and Health Service and Chair of the Queensland Trust for Nature. Adjunct Professor University of Queensland. Member since 2016.

Chelsey Drake – Partner at Allens. Member since 2016.

Teresa Dyson – Non-executive director of Seven West Media, Genex Power, LGIAsuper, Energy Queensland, Shine Justice and Entyr. Member since 2018.

Sylvia Falzon – Non-executive director of Suncorp Group and Premier Investments. Chairman of Cabrini Health Australia. Member since 2023.

Joseph Fayyad – Australian Chief Executive Officer of Bank of America. Member since 2023.

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.

Louise Higgins – Managing Director, Suncorp Integration, ANZ Bank. Non-executive director of Enero Group. Member since 2023.

Ruth Higgins SC – Barrister, Senior Vice President of the NSW Bar Association and director of the Law Council of Australia. Member since 2023.

Tracey Horton AO (Acting President) – Non-executive director of The GPT Group, IDP Education and CLV FM. Member since 2015.

Richard Hunt (Acting President) – Chairman Fort Street Capital and Chairman Fort Street Real Estate Capital. Member since 2012.

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

Christian Johnston – Advisory Director at 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 – Deputy Chairman and Lead Independent Director 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 since 2015.

Michael Lishman – Partner at Hamilton Locke. Member since 2020.

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Timothy Longstaff – Non-executive director of Aurizon Holdings Limited, Snowy Hydro Limited, Ingham’s Group Limited, Perenti Limited and The George Institute for Global Health. 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, member the UNSW Council’s Investment Committee. Member since 2012.

Rebecca Maslen-Stannage – Global Chair and Senior Partner at Herbert Smith Freehills. Member since 2017.

Denise McComish – Non-executive director of Webjet Limited, Macmahon Holdings Limited, Gold Road Resources Limited, Synergy, 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.

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.

Emma-Jane Newton – Managing Director at Morgan Stanley and Chair of Sydney Dance Company. Member since 2023.

Diana Nicholson (Acting President) – Partner, Financial Services Sector Leader at King & Wood Mallesons, Trustee Melbourne & Olympic Parks Trust, Director Care Australia Limited. 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, Chair of Abacus Storage King and non-executive director of The Lottery Corporation Limited. Member 2005–2011 and re-appointed 2018.

Deborah Page AM – Non-executive director of Brickworks Limited, Growthpoint Properties Australia and The Star Entertainment Group Limited. Member since 2022.

Neil Pathak – Partner and Head of M&A (Australia) at Ashurst, Senior Fellow of the University of Melbourne Law School. Member since 2017.

Karen Phin – Non-executive director of Omni Bridgeway and ARB Corporation. Member since 2015.

Sarah Rennie – Co-Head of Investment Banking Australia and Head of Equity Capital Markets at Jarden Australia. Member since 2015.

John Sheahan KC – Barrister. Member 2014–2020 and re-appointed 2021.

James Stewart – Partner at DLA Piper, non-executive director of The Splendid Gin, Caledon Estate owner. 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.

Erin Tinker – Founding Partner at Barrenjoey. Member since 2023.

Kate Towey – Partner at Allens. Member since 2023.

Nicola Wakefield Evans AM – Non-executive director of Macquarie Group, Lendlease Corporation, Viva Energy Group Limited, Clean Energy Finance Corporation, MetLife Insurance Limited, MetLife General Insurance Limited and GO (Goodes O’Loughlin) Foundation. Chair of 30% Club Australia. Member since 2015.

Sharon Warburton – Non-executive director of Wesfarmers, Northern Star Resources, Blackmores, Worley, Thiess Group Holdings, Mirvac Funds Management Australia and Karlka Nyiyaparli Aboriginal Corporation. Member since 2015.

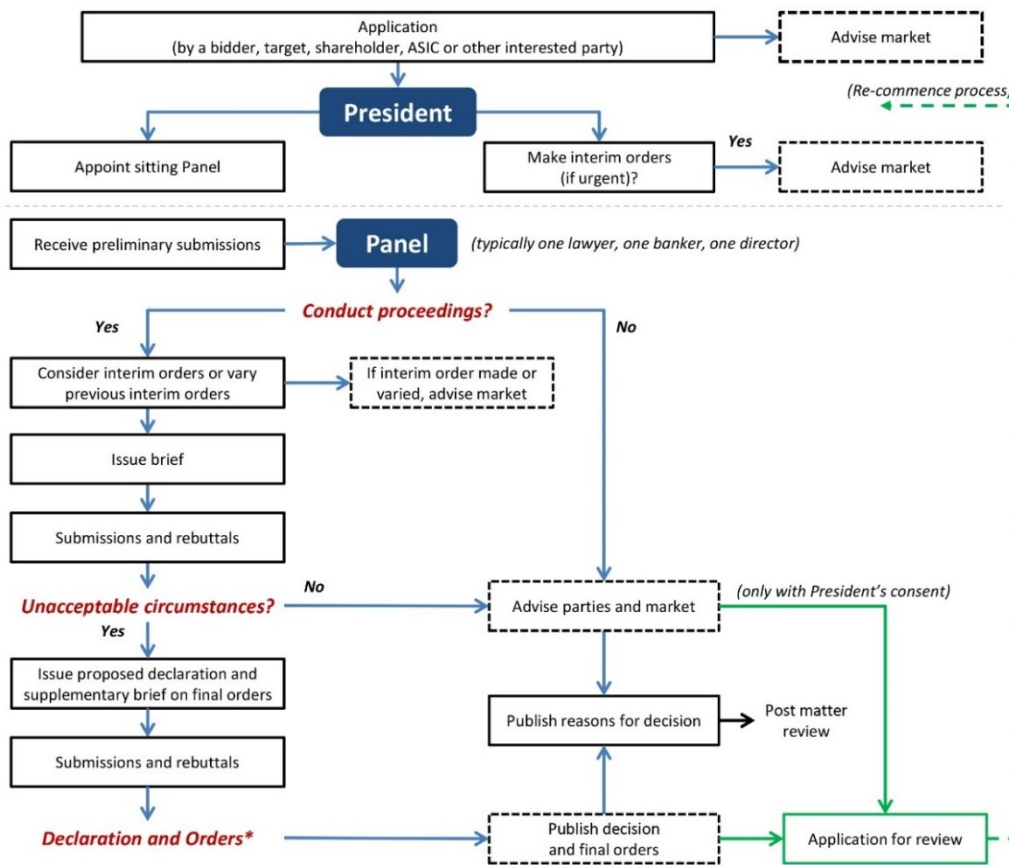
PART 3 – THE WORK OF THE PANEL

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

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The Panel usually receives material voluntarily from parties in response to a Panel brief. The Panel has the power to convene a conference¹⁹ and summon witnesses to give evidence and provide documents.²⁰ During the 2022–2023 financial year the Panel convened one conference and summoned one witness.

Further description of the Panel's processes can be found on its website.

Appendix 3 lists the applications in the current period (16 in total). Table 3 groups the applications by outcome and Table 4 shows the time frame to decision. Table 5 groups applications by subject matter.

Table 3: Outcome of applications received by the Panel, 2022–23

Form of resolution	Number of matters	Comments
Declaration and Orders	1	Circumstances are unacceptable and may be remedied with orders
Declaration and Undertakings ²¹	1	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	6	Panel decides to conduct proceedings, but does not find any unacceptable circumstances
Decline to conduct proceedings, undertaking/ action by party	2	Panel decides to not conduct proceedings after a party provides an undertaking or takes an action that resolves any potential unacceptable circumstances
Decline to conduct proceedings	3	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	16	

19 Regulations 35 to 41 of the ASIC Regulations.

20 Section 192 of the ASIC Act.

21 Section 201A of the ASIC Act.

Table 4: Time to decision by the Panel, 2022–23

Time to decision	Number of matters	Average days ²²
Up to 14 days	2	10.0
15 days to 31 days	9	21.9
32 days to 90 days	4	37.0
Over 91 days	1	101.0 ²³
Total	16	29.1

22 Average days to decision for each time band. For example the average days to decision for the matters that were decided between 15 and 31 days was 21.9 days.

23 An extension of time was obtained from the Court in relation to this matter under section 657B

Issues in applications

Table 5: Issues raised in applications, 2022–23

Issue	Number of matters	Name of case
Association/ breach of s606	5.5	Firetail Resources Limited, Lincoln Minerals Limited 03 (in part), Lincoln Minerals Limited 04R (in part), AIMS Property Securities Fund 03, The Market Herald Limited (in part), A S P Aluminium Holdings Pty Ltd, A S P Aluminium Holdings Pty Ltd 02R
Rights issues	3	Nimrod Resources Limited 02, Mineral Commodities Limited 02, Lincoln Minerals Limited 02 (in part), The Market Herald Limited (in part)
Bidder's statement disclosure	2	Nitro Software Limited 02, Healius Limited
Combined bid and scheme of arrangement	2	Nitro Software Limited 01, Nitro Software Limited 03R
Insolvency	1	Moreton Resources Limited (in Liquidation) (Receivers Appointed) (Subject to Deed of Company Arrangement) 03
Trust scheme	1	CD Private Equity Fund II
Frustrating action	1	Lincoln Minerals Limited 03 (in part), Lincoln Minerals Limited 04R (in part)
Notice of meeting disclosure	0.5	Lincoln Minerals Limited 02 (in part)
Total	16	

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 Sydney for the November 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 ‘Public consultations process’ under ‘Consultations’ on the Panel’s website.

In the current period the Panel published two consultation papers.

Table 6: Consultation papers issued, 2022–23

Consultation Paper	Issue Date	Close Date	Number of submissions
GN 19 – Insider participation in control transactions	14/12/2022	28/02/2023	7
GN 7 – Deal protection	14/12/2022	28/02/2023	9

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 (one post matter review was held in 2022–23).

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.²⁴

There was one referral made during the current period.

²⁴ 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.

During the financial year, 127,260 people visited the Panel's website and there were 351,872 page views.

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 7: Summary resource statement

	Actual budget allocation	Expenses	Balance remaining
	2022–23 (\$'000)	2022–23 (\$'000)	2022–23 (\$'000)
Revenue			
Revenue (Department of the Treasury budget allocation and section 74 relevant agency receipts)	2,800	2,498	302
Total resourcing	2,800	2,498	302
		2022–23	2023–24
Average staffing levels (number)		7.9	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 8: Income statement (Showing Net Cost of Services) (unaudited)
for the year ended 30 June 2023**

	\$
NET COST OF SERVICES	
Employee expenses	
Salaries	1,349,662
Employer superannuation	193,916
Members' annual retainer and sitting fees	534,062
Total employee expenses	2,077,640
Operating expenses	
Consultants	103,070
Travel	93,296
Contractors	76,496
Legal	70,146
Publications and subscriptions	27,813
General Office	27,197
Conferences and training	22,076
Total operating expenses	420,094
Total expenses incurred to 30 June 2023	2,497,734
Own source income	–
Net cost of services	-2,497,734
Revenue (Department of the Treasury budget allocation)	2,800,000
Surplus/(Deficit)	302,266

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 2022–23 financial year.

Salaries and members' annual and sitting fees

Salaries and member sitting fees are recognised as they occur.

Salaries for the current financial year include payments to firms for secondees' services. The payments are treated as payments for employees, not consultants.

GST

Revenues and expenses are recognised net of goods and services tax.

PART 5 – MANAGEMENT AND ACCOUNTABILITY

External scrutiny

Panel decisions in relation to unacceptable circumstances and orders are subject to internal review by another Panel.²⁵ All Panel decisions are subject to judicial review.²⁶ However, most reviews of Panel decisions end with the review Panel process.

See Table 15 for a breakdown of Panel review proceedings.

Government scrutiny

The Panel was not subject to any reports by the ANAO in 2022–23.

The Panel attends hearings of the Senate Standing Committee on Economics Estimates and the Parliamentary Joint Committee on Corporations and Financial Services as required.²⁷

Ombudsman

The Panel was not aware of any reports by the Commonwealth Ombudsman in 2022–23 in relation to the Panel.

Management of human resources

Staffing

At 30 June 2023, the executive consisted of six permanent staff (one on long term leave), two non-ongoing staff and one legal secondee.²⁸ Permanent staff are employed under the *Public Service Act 1999* (Cth).

25 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.

26 Section 75(v) of the Constitution, the *Judiciary Act 1903* and the *Administrative Decisions (Judicial Review) Act 1977*, see page 23 for details about current judicial reviews of Panel decisions.

27 See Parliamentary Joint Committee on Corporations and Financial Services, Report on the 2021–2022 annual reports of bodies established under the ASIC Act. Pages 3 to 8 of the report discuss the Takeovers Panel.

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

Table 9: Operative staff by classification and gender²⁹

Classification	Full time		Part time	Total
	Male	Female	Female	
APS4		1		1
APS6		1		1
EL2	2	1	1	4
SEB1	1			1
SEB2		1		1
Total	3	4	1	8

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, 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 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).

²⁹ No employees identified themselves as Indigenous at 30 June 2023.

Workplace diversity

The Panel values diversity and benefits from Treasury's Inclusion and Diversity Strategy 2019–21 and the development of Treasury's next Inclusion and Diversity Strategy is underway. 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 six contracts that each exceeded \$10,000. These related to two secondment agreements, two contractors, one IT project and one online research tool.

Consultants

During 2022–23, the Panel had a fee for service contract with a web design firm to redevelop the Panel’s website.

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

The Panel did not make any discretionary grants in 2022–23.

Advertising and market research

The Panel did not undertake any advertising or market research during 2022–23.

Environmental performance

The Panel follows Treasury’s Environmental Management Plan. Details on actions taken in relation to ecologically sustainable development and environmental performance are included in Treasury’s Annual Report (Part 5: Appendices – Ecologically sustainable development and environmental performance).

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 2022–23.

APPENDIX 1 – PANEL MEMBERS

Table 10: Members of the Panel at 30 June 2023

Mr Alex Cartel (President)	Mr Jeremy Leibler
Ms Yasmin Allen AM	Mr Michael Lishman
Mr Kelvin Barry	Mr Timothy Longstaff
Mr Robin Bishop	Ms Sandy Mak
Mr Carl Blanchard	Mr Ron Malek
Mr Michael Borsky KC	Ms Rebecca Maslen-Stannage
Mr Constantine Boulougouris	Ms Denise McComish
Mr James Burchnall	Mr John McGlue
Ms Stephanie Charles	Mr Bruce McLennan
Mr Alberto Colla	Mr Rory Moriarty
Mr Bruce Cowley	Ms Kerry Morrow
Ms Chelsey Drake	Ms Emma-Jane Newton
Ms Teresa Dyson	Ms Diana Nicholson
Ms Sylvia Falzon	Mr Tony Osmond
Mr Joseph Fayyad	Mr John O’Sullivan
Ms Marissa Freund	Mrs Deborah Page AM
Ms Elizabeth Hallett	Mr Neil Pathak
Ms Louise Higgins	Ms Karen Phin
Dr Ruth Higgins SC	Ms Sarah Rennie
Ms Tracey Horton AO	Mr John Sheahan KC
Mr Richard Hunt	Mr James Stewart
Ms Michelle Jablko	Ms Philippa Stone
Mr Christian Johnston	Ms Erin Tinker
Ms Kristen Jung	Ms Kate Towey
Ms Marina Kelman	Ms Nicola Wakefield Evans AM
Mr Bill Koeck	Ms Sharon Warburton

Table 11: Members appointed to the Panel in 2022–23

Mr Carl Blanchard	Ms Emma-Jane Newton
Ms Sylvia Falzon	Dr Kristina Stern SC
Mr Joseph Fayyad	Ms Erin Tinker
Ms Louise Higgins	Ms Kate Towey
Dr Ruth Higgins SC	

Table 12: Members who ceased their membership of the Panel in 2022–23

Ms Paula Dwyer	Mr Robert McKenzie
Ms Karen Evans-Cullen	Ms Tara Page
Mr Ian Jackman SC	Dr Kristina Stern SC
Mr Anthony Jarvis	Mr David Williamson

APPENDIX 2 – SUB-COMMITTEE MEMBERS

Table 13: Sub-committees

Topic	Sub-committee members	
	Panel member	External member
GN 19 Insider Participation	Mr Alex Cartel (President)	Ms Karen Evans-Cullen
	Ms Stephanie Charles	
	Ms Marissa Freund	
	Mr Bill Koeck	
	Mr Ron Malek	
	Ms Diana Nicholson	
	Mr Neil Pathak	
GN 7 Deal protection	Mr Alex Cartel (President)	Ms Karen Evans-Cullen
	Mr Kelvin Barry	
	Mr Bruce Cowley	
	Ms Diana Nicholson	
	Mr Neil Pathak	
	Mr James Stewart	
	Ms Nicola Wakefield Evans	

APPENDIX 3 – PANEL APPLICATIONS

Table 14: Applications received by the Panel in 2022–23³⁰

	Matter No.	Section	Matter name	Decision	Application Date	Decision date	Days to Decision
1	2022/17	657A,D,E	Moreton Resources Limited 03	Declined to conduct proceedings	05/07/2022	12/07/2022	7
2	2022/18	657A,D,E	Firetail Resources Limited	Declined to conduct proceedings	27/07/2022	16/08/2022	20
3	2022/19	657A,D,E	Nimrod Resources Limited 02	Declined to conduct proceedings	23/09/2022	06/10/2022	13
4	2022/20	657A,D,E	Mineral Commodities Limited 02	Declaration and undertaking	17/10/2022	28/11/2022	42
5	2022/21	657A,D,E	CD Private Equity Fund II	Declined to conduct proceedings, action by party	27/10/2022	14/11/2022	18
6	2022/22	657A,D,E	Lincoln Minerals Limited 02	Conducted proceedings, no declaration, action by party	27/10/2022	29/11/2022	33
7	2022/23	657A,D,E	Lincoln Minerals Limited 03	Conducted proceedings, no declaration, action by party	31/10/2022	29/11/2022	29
8	2022/24	657EA	Lincoln Minerals Limited 04R	Conducted proceedings, no declaration	01/12/2022	04/01/2023	34
9	2023/01	657A,D	Nitro Software Limited	Conducted proceedings, no declaration	04/01/2023	23/01/2023	19

³⁰ Under sections 657C and 657EA.

Table 14: Applications received by the Panel in 2022–23 (continued)

	Matter No.	Section	Matter name	Decision	Application Date	Decision date	Days to Decision
10	2023/02	657A,D,E	Nitro Software Limited 02	Conducted proceedings, no declaration, action by party	09/01/2023	08/02/2023	30
11	2023/03	657A,D	AIMS Property Securities Fund 03	Conducted proceedings, no declaration	21/01/2023	01/03/2023	39
12	2023/04	657EA	Nitro Software Limited 03R	Conducted proceedings, no declaration	24/01/2023	09/02/2023	16
13	2023/05	657A,D,E	The Market Herald Limited	Declaration and orders	06/02/2023	18/05/2023	101
14	2023/06	657A,D,E	Healius Limited	Declined to conduct proceedings, action by party	28/03/2023	14/04/2023	17
15	2023/07	657A,D,E	ASP Aluminium Holdings Pty Limited	Conducted proceedings, no declaration	02/05/2023	26/05/2023	24
16	2023/08	657EA	ASP Aluminium Holdings Pty Limited 02R	Conducted proceedings, no declaration	30/05/2023	23/06/2023	24

Table 15: Outcomes of review applications received by the Panel in 2022–23

	Matter No.	Review matter name	Matter reviewed	Review outcome
1	2022/24	Lincoln Minerals Limited 04R	Lincoln Minerals Limited 02 & 03	Affirmed Panel decision
2	2023/04	Nitro Software Limited 03R	Nitro Software Limited	Affirmed Panel decision
3	2023/08	ASP Aluminium Holdings Pty Limited 02R	ASP Aluminium Holdings Pty Limited	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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