Australian Government

Takeovers Panel

Reasons for Decision
Vmoto Limited 02R
[2025] ATP 9

Catchwords:

Decline to conduct proceedings – association – de-listing – buy-back – board spill – rights issue – evidence – jurisdiction

Corporations Act 2001 (Cth), sections 249D, 602, 657C, 657EA

Takeovers Panel Procedural Rules 2020, rules 19(1), 19(2) and 20

Takeovers Panel Procedural Guidelines 2020, 4.5

Guidance Note 1: Unacceptable Circumstances, Guidance Note 2: Reviewing Decisions, Guidance Note 17: Rights Issues

ASX Guidance Note 33: Removal of entities from the ASX Official List

Vmoto Limited [2025] ATP 7, Flinders Mines Limited 02 and 03 [2019] ATP 2, Dragon Mining Limited [2014] ATP 5, Mount Gibson Iron Limited [2008] ATP 4

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The review Panel, Joseph Fayyad, Kristen Jung and Karen Phin (sitting President), declined to conduct proceedings on an application by the Munro Family Super Fund in relation to the affairs of Vmoto Limited. The application concerned (among other things) alleged transfers of Vmoto shares to entities selected by the board and alleged deficiencies in the share buy-back conducted by Vmoto in the context of a proposed de-listing. The review Panel reached similar conclusions to the initial Panel and considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

2023 Capital Raising	the Entitlement Offer, the Shortfall Offer and the Follow-on Placement
ASX Aware Letter	has the meaning given in paragraph 34
Buy-back	has the meaning given in paragraph 13
Consideration Share Issue	has the meaning given in paragraph 9
Employee Share Issue	has the meaning given in paragraph 15
Entitlement Offer	has the meaning given in paragraph 5

Follow-on Placement	has the meaning given in paragraph 7
Preliminary Final Report	has the meaning given in paragraph 21
Procedural Rules	*Takeovers Panel Procedural Rules 2020*
Proposed De-listing	has the meaning given in paragraph 13
Section 249D[1] Meeting	has the meaning given in paragraph 16
Shortfall Offer	has the meaning given in paragraph 6
Small Holdings Sale Facility	has the meaning given in paragraph 10
Vmoto	Vmoto Limited
Vmoto 3Q24 Market Update	has the meaning given in paragraph 12
Vmoto FY24 Guidance	has the meaning given in paragraph 8

FACTS

3. The facts are set out in detail in the initial Panel's reasons for decision in *Vmoto Limited*.[2] Below is a summary of those facts and other relevant facts at the time of the review application.

4. Vmoto is an ASX listed company (ASX code: VMT) which develops and manufactures electric powered two-wheel vehicles.

5. On 13 October 2023, Vmoto announced a non-underwritten non-renounceable 1 for 4 entitlement offer at $0.15 per share to raise approximately $10.8 million (**Entitlement Offer**).

6. On 20 November 2023, Vmoto announced that the Entitlement Offer had closed with a shortfall of approximately 35 million shares ($5.3 million) and that the shortfall would be offered to investors invited to participate by the Vmoto directors (**Shortfall Offer**).

7. On 6 December 2023, Vmoto announced that, to accommodate excess demand under the Shortfall Offer, it had decided to undertake a 'follow-on placement' of approximately 32 million shares ($4.9 million) on the same terms as the Entitlement Offer (**Follow-on Placement**).

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[1] Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6, 6A or 6C have the meaning given in the relevant Chapter (as modified by ASIC)
[2] [2025] ATP 7

8. On 30 April 2024, Vmoto released an announcement titled 'Vmoto 1Q24 Market Update and FY24 Guidance' which included (among other things) the following statement: "*Vmoto expects to report a net loss after tax in the range of A$3.3 million and A$3.6 million for FY24 due to continuing volatile economic conditions and an increase in operational costs resulting from new subsidiaries in Europe*" (**Vmoto FY24 Guidance**).

9. On 27 May 2024, Vmoto announced that it had issued approximately 11 million shares as consideration for the acquisition of the remaining 50% interest in Vmoto Soco Italy srl (**Consideration Share Issue**).

10. On 23 July 2024, Vmoto announced that it had completed an opt-out small holdings sale facility, which had resulted in approximately 0.46% of its issued capital being sold at the sale price of $0.1373, reducing the total number of shareholders by 1,169 shareholders (**Small Holdings Sale Facility**).

11. On 30 August 2024, Vmoto released its Interim Financial Report disclosing (among other things), a net loss after tax of $3 million.

12. On 4 November 2024, Vmoto released an announcement titled 'Vmoto 3Q24 Market Update', disclosing (among other things) an increase in unit sales up 14% on 3Q23 and up 35% on 2Q24 and that the company "*continued to remain operationally cash flow positive during 3Q24*" (**Vmoto 3Q24 Market Update**).

13. On 16 December 2024, Vmoto announced an intention to de-list from the ASX (**Proposed De-listing**) subject to obtaining the required shareholder approval by way of a special resolution to be put forward at a general meeting proposed to be held on or around early March 2025. The announcement also stated (among other things) that Vmoto intended to undertake an off-market equal access share buy-back (**Buy-back**) for up to 10% of the smallest number of Vmoto shares that Vmoto had on issue over the 12 months preceding the Buy-back.

14. The Buy-back was open from 2 January 2025 to 31 January 2025, with a price set at $0.12 per share.

15. On 21 January 2025, Vmoto issued 8.4 million shares to employees and approximately 1.3 million shares to consultants (together, **Employee Share Issue**).

16. On 23 January 2025, the applicant and three related entities lodged a section 249D notice requisitioning a meeting (**Section 249D Meeting**) to consider resolutions to remove each of the incumbent Vmoto directors other than the Managing Director and resolutions to appoint two new Vmoto directors.

17. On 3 February 2025, Vmoto announced that it had received applications representing approximately 143% of the maximum number of shares that Vmoto could buy-back under the Buy-back terms and that due to this demand the Buy-back would be scaled back proportionately.

18. On 4 February 2025, Vmoto announced that the Section 249D Meeting had been scheduled for 6 March 2025 and released a notice of meeting and explanatory statement to shareholders. The notice of meeting stated that the board recommended that shareholders vote against all resolutions. The notice of meeting also included a

letter to shareholders which contained the following statement (and other similar statements):

> "*Whilst discontinuation of the proposed Delisting is the Requisitioning Shareholders' stated motive for the Resolutions, the Board believes the Requisitioning Shareholders are attempting to obtain effective control of the Board and therefore, the Company, without paying any control premium.*"

19. On 17 February 2025, the applicant sought a declaration of unacceptable circumstances. The applicant submitted (among other things) that:

    (a) The Proposed De-listing would follow transactions involving "*significant oppression of minority shareholders*" and that the Vmoto board was building support for its proposal through the transfer of 22.6% of the company's shares "*to entities selected by the board to receive those shares in unacceptable circumstances*".[3]

    (b) The price under the Buy-back was not reflective of the value of the company and the Buy-back was undertaken at a time when shareholders were uninformed about the company's recent performance.

    (c) The Entitlement Offer was contrary to Guidance Note 17 including because the board had no intention of, and made no attempt to, "*broadly place*" Shortfall Shares.

    (d) Certain substantial shareholders of Vmoto had not lodged substantial holding notices.

    (e) The notice of meeting in relation to the Section 249D Meeting contained misleading statements concerning the requisitioners' intentions and the accompanying voting form was causing confusion.

20. The initial Panel declined to conduct proceedings on the basis that (among other things):

    (a) the applicant did not provide a sufficient body of material to justify the Panel making further enquiries

    (b) much of the material provided related to matters that occurred some time ago and

    (c) there were other forums available to the applicant to ventilate its concerns.

21. On 28 February 2025, Vmoto released its preliminary final results for the financial year ended 31 December 2024 disclosing (among other things) a net profit after tax of $149,000 (**Preliminary Final Report**).

[3] The transactions included the Entitlement Offer and Follow-on Placement, the Small Holdings Sale Facility, the Consideration Share Issue and the Employee Share Issue

APPLICATION

22. On 2 March 2025, the applicant requested the President's consent to apply for a review of the decision by the initial Panel in *Vmoto Limited*[4] pursuant to section 657EA.

23. The applicant submitted that it had been denied the knowledge that would have led it to make a timely application in relation to "*the unacceptable conduct that occurred in conjunction with the late 2023 rights issue and follow on placement when those shares weren't broadly distributed in compliance with the panel's guidance notes 1 and 17*" given the lack of substantial holding notice disclosure by two of Vmoto's substantial shareholders, whose shareholding increased from 6.1% to 11.41% and from 1.72% to 9.37% respectively following the 2023 Capital Raising.

24. The applicant also submitted that the positive results announced in the Preliminary Final Report contrasted with Vmoto's previously forecasted loss for the year in the Vmoto FY24 Guidance and that the Vmoto board had failed to inform the market of these price sensitive outcomes before proceeding with the Buy-back "*at well below fair value given the contents of the [Preliminary Final Report]*".

25. The applicant sought the same interim orders and final orders sought in the initial application.

President's consent and interim orders

26. In accordance with Guidance Note 2: Reviewing Decisions, the President's approach to consenting to a review is guided by the following considerations:

    (a) "*that it is a policy underpinning s657EA(2) that there should be a prompt conclusion to Panel proceedings*

    (b) *whether there was any potential error in the sitting Panel's decision and*

    (c) *whether there is any other basis for granting consent, for example, if there is new evidence, the importance of the dispute, whether there would be material prejudice to any party by consenting or by withholding consent, and the merits of the sitting Panel's decision.*"

27. The President invited Vmoto and ASIC to provide submissions on whether the applicant's submissions in its review application warranted the provision of its consent to the review.

28. Vmoto submitted that the President should decline to grant consent under section 657EA(2) given (among other things) there were no errors in the initial Panel's decision and that the applicant did not provide any relevant new material that could lead to the President concluding that consent ought to be granted. With regard to the applicant's submissions in support of its review application, Vmoto also submitted (among other things) that:

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[4] *Vmoto Limited* [2025] ATP 7

(a) the applicant did not provide any basis or supporting evidence for its statement that the securities issued under the 2023 Capital Raising "*weren't broadly distributed in compliance with the panel's guidance notes 1 and 17*"

(b) the application was "*significantly out of time*" as it related to the 2023 Capital Raising

(c) "*that the Applicant is seeking to delay or prevent the holding of a meeting that they required to be called (and cause Vmoto to breach its obligations under section 249D(5) of the Corporations Act) is absurd and should not be encouraged by the Panel*"

(d) the Buy-back was announced on 16 December 2024, along with the Proposed De-listing, and "*was undertaken in an efficient, competitive and informed market*" and

(e) Vmoto was required to lodge a preliminary final report on Appendix 4E under the ASX Listing Rules no later than two months after the end of the accounting period and had done so on 28 February 2025 with the Preliminary Final Report.

29. The President was not on first view satisfied that there was any potential error in the initial Panel's decision and considered whether the applicant's review application brought new evidence to light that would justify him consenting to the review application.

30. The President was also not convinced that the information about the number of shares held by the second and third largest shareholders of Vmoto was new evidence given the information was disclosed in the 2024 annual report.

31. However, the President considered, in light of submissions made by Vmoto shareholders in the initial proceedings regarding their concerns with the value proposition under the Buy-back,[5] that the Preliminary Final Report contained relevant new evidence. While not on first view convinced that the new evidence would be material, the President considered that this would be for a review Panel to decide and, on balance, decided to grant consent to the review of the decision.[6]

32. The President also considered, on an urgent basis, the interim order sought by the applicant to postpone the Section 249D Meeting, scheduled to be held on Thursday, 6 March 2025. The President decided not to make that interim order, noting that if the review Panel (once appointed) made a declaration of unacceptable circumstances, it could make a final order requiring another meeting should it see fit to do so.

DISCUSSION

33. The powers of a review Panel are set out in section 657EA. Our role is to conduct a *de novo* review.

34. Following receipt of the review application, but prior to the determination of the matter, the following events occurred:

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[5] See *Vmoto Limited* [2025] ATP 7 at [21]

[6] Noting, for completeness, that the President did not have the benefit of the ASX Aware Letter or Vmoto's response to the ASX Aware Letter at the time of his decision

(a) On 6 March 2025, Vmoto announced the results of the Section 249D Meeting. None of the board spill resolutions was carried and the percentage of votes cast on the poll was as follows:

Resolution	For	Against
1 Removal of Mr Blair Edward Sergeant as a director	24.53%	75.47%
2 Removal of Mr Erchuan Zhou as a director	25.56%	74.44%
3 Removal of Mr Aaron Reade Kidd as a director	25.49%	74.51%
4 Removal of Mr Yin How Teo as a director	25.56%	74.44%
5 Appointment of Mr Phillip Ashley Campbell as a director	25.56%	74.44%
6 Appointment of Mr Andrew Logie-Smith as a director	25.57%	74.43%

(b) On 7 March 2025, the ASX issued an Aware Letter requesting that Vmoto provide certain information with regards to the variance between the FY24 Guidance and the Preliminary Final Report (**ASX Aware Letter**) and, on 11 March 2025, Vmoto issued a response to the ASX Aware Letter.

35. We have considered all the material but address specifically only those we consider necessary to explain our reasoning. The materials included:

(a) the material before the initial Panel in *Vmoto Limited*[7]

(b) a preliminary submission from Vmoto to the President submitting that he should decline to grant consent under section 657EA(2)

(c) a preliminary submission from Vmoto submitting that we should decline to conduct proceedings and

(d) two out of process submissions from the applicant in response to Vmoto's preliminary submissions described in 35(b) and 35(c) above.[8]

36. We also received the initial Panel's reasons.[9]

37. We decided not to receive submissions made by other Vmoto shareholders as non-parties.[10]

Allegations of unacceptable share issues and transfers

38. The applicant submitted that the Proposed De-listing was preceded "*by a number of transactions that have involved significant oppression of minority shareholders and the*

[7] [2025] ATP 7 at [21]
[8] Procedural Rules, rule 20
[9] We did not receive the President's reasons for granting consent under s657EA(2)
[10] See further at [76] to [78]

transfer of 22.6% of the company's shares to entities selected by the board to receive those shares in unacceptable circumstances as defined in The Panels Guidance Notes 1 and 17."

39. In particular, the applicant submitted:

    (a) in relation to the 2023 Capital Raising, that the Vmoto board had "*no intention of, and made no attempt to*" broadly place the shortfall shares and "*further oppressed minority shareholders by placing an additional 9.98% of the shares on issue in the same fashion to invited parties under the follow on placement*" in unacceptable circumstances having regard to the company's need for funds

    (b) in relation to the Employee Share Issue, that the timing of the issue prior to the Proposed De-listing "*served to continue the pattern of putting shares in the hands of supporters so the directors could benefit from their support for their proposals*"

    (c) in relation to the Consideration Share Issue, that the terms of the underlying transaction were "*far from arms length*" and "*[a]part from the suppression of minorities, this transaction also increased the number of shares in the hands of supporters of the board*" and

    (d) in relation to the Small Holdings Sale Facility, that shares were transferred to parties selected by the board in unacceptable circumstances.

40. It appears to us that the applicant makes the following claims:

    (a) that the Vmoto board has engaged in oppressive conduct

    (b) that there is some form of association between the directors of Vmoto and certain shareholders who have received Vmoto shares and

    (c) that Vmoto did not attempt to mitigate the control effect of the 2023 Capital Raising.

Oppressive conduct

41. On several occasions, the applicant referred in its submissions to the "*oppression of minority shareholders*".

42. Vmoto submitted that the applicant made a "*broad and unsupported allegation of 'minority oppression' by the Vmoto board*" which is outside the Panel's jurisdiction and for which "*there are many more suitable forums to ventilate any concerns the Applicant may have*".

43. We consider that whether there has been an oppression of minority shareholders is not a matter for us. Rather, our focus is whether unacceptable circumstances exist. We reiterate the initial Panel's view that it is open to the applicant to consider bringing a shareholder oppression suit in the courts if it wishes. [11]

Association

44. The applicant submitted that the list of the 20 largest registered holders of quoted securities in Vmoto, disclosed in Vmoto's annual reports, showed that three of Vmoto's shareholders' holdings increased by a number of shares that was materially

[11] *Vmoto Limited* [2025] ATP 7 at [26]

the same as "*the number placed to those selected parties*" in the financial year of the 2023 Capital Raising and that, given the results of the Section 249D Meeting, this "*provides probative and supportive evidence that a large number, if not all, the people who received shares that were placed by the board in unacceptable circumstances voted with the board which delivered the board financial benefit and supports a rational conclusion that they have formed an association with the directors*".

45. The applicant also submitted that it was unable to confirm who the company placed those shares with, in the absence of disclosure by the company and the "*two parties who became substantial holders during that period*" and requested that the Panel "*use its extensive powers to determine who received the shares that were placed to parties selected by the board*".

46. While the applicant submitted that its application was "*not reliant on establishing associations*", we agree with the initial Panel that the applicant was, at least in part, alleging there was some form of association or relationships between the directors of Vmoto and other shareholders that were unacceptable.[12]

47. Vmoto submitted that the application made "*vague and unsupported assertions that the Vmoto Board has sought to issue shares to a group of supportive shareholders through various issues of shares dating back to October 2023*" and that it "*cannot properly be said to contain a credible allegation of the existence of an association*" in a context where the applicant did not "*specifically identify a bloc of voting power that is alleged to be the subject of an association*".

48. The Panel's starting point for an association matter is that it is for the applicant to demonstrate a sufficient body of evidence of association and to convince the Panel as to that association, albeit with proper inferences being drawn.[13] While we acknowledge the difficulties that an applicant faces in gathering evidence in an association matter, we reiterate that the Panel has limited investigatory powers and that, before we conduct proceedings, "*an applicant must do more than make allegations of association and rely on us to substantiate them. An applicant must persuade us by the evidence it adduces that we should conduct proceedings*".[14]

49. The applicant also made allegations of uncommercial dealings, including with regards to the Employee Share Issue being "*on terms that were far from arms length*" and the Consideration Share Issue were "*not in shareholders best interests and served to provide and [sic] additional benefit to the vendors and of course increase their voting power and ability to support the directors agenda*".

50. Without sufficient probative evidence and given the significant time that has passed since the relevant transactions occurred,[15] we are not minded to second guess Vmoto's board decision to exercise its discretion to issue shares in these instances.

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[12] Ibid at [23]
[13] *Mount Gibson Iron Limited* [2008] ATP 4 at [15]
[14] *Dragon Mining Limited* [2014] ATP 5 at [60], footnotes omitted
[15] Other than the Employee Share Issue, discussed at paragraph 71 below

51. We consider that the applicant fell short of providing a sufficient body of material to warrant us conducting further enquiries into the relationships between the Vmoto directors and any Vmoto shareholders.

Control effect

52. The applicant submitted that the Shortfall Offer and the Follow-on Placement did not comply with Guidance Note 17 and that the Vmoto board "*had no intention of, and made no attempt to, broadly place those shares*". The applicant also queried the need for funds in the 2023 Capital Raising.

53. Vmoto submitted that the Entitlement Offer was undertaken in accordance with all applicable laws and for a genuine need for funds.

54. Guidance Note 17 (at [35]) provides that "*an application needs to demonstrate (by evidence and reasoning) a basis for the Panel's intervention, identifying the effect complained of. The application must be made in a timely manner to minimise potential harm and disruption to the company and shareholders*."

55. We do not consider that the applicant demonstrated a basis for the Panel's intervention here, having regard to the lack of probative evidence supporting the applicant's allegations and the historical nature of these allegations.

Buy-back and Proposed De-listing

56. The applicant submitted that "*[t]he company's announcement on the 16/12/2024 of its intention to delist and off market equal access scheme to buy back 40m shares at a fraction of the depreciated value of the company's tangible assets, 15 days before the end of it's [sic] financial year when shareholders were completely uninformed about the company's recent performance, was clearly not in all shareholders best interests*". The applicant submitted that the timing of the Buy-back was unacceptable and that "*[t]he 10% of shares on issue bought back from people not wishing to remain shareholders in an unlisted environment is in fact 40% of 25%*".

57. Vmoto submitted that "*the Proposed Delisting does not have any effect on the control or potential control of Vmoto and does not result in the acquisition of a substantial interest in Vmoto by any person*".

58. Vmoto provided a table (reproduced below[16]) showing the extent to which the relevant interest and voting power of each of Vmoto's existing substantial shareholders increased as a result of the Buy-back:

Shareholder	**Prior to Buyback**		**After Buyback**	
	Relevant Interest	Voting Power	Relevant Interest	Voting Power
Yiting (Charles) Chen	46,766,530 Shares	10.92%	46,766,530 Shares	12.03%
Yuming Zhou	45,527,880 Shares	10.63%	45,527,880 Shares	11.71%

[16] Footnotes omitted

Yi Chen	37,173,109 Shares	8.68%	37,173,109 Shares	9.56%
Malaky Kazem	26,229,964 Shares	6.12%	26,229,964 Shares	6.74%
Raymond Edward Munro Group	22,663,000 Shares	5.29%	22,663,000 Shares	5.83%

59. Vmoto also submitted that the Buy-back was undertaken in accordance with applicable law and ASIC guidance, following a unanimous decision from its board and an in-principle approval from the ASX.[17] It also submitted, referring to its response to the ASX Aware Letter, that "*although not considered material by Vmoto*", its net profit after tax for the year ended 31 December 2024 was higher than the guidance provided in April 2024 "*due to certain slow and obsolete stocks and doubtful debts not requiring impairment*".

60. We considered Vmoto's financial updates in the context of the Buy-back. On balance, we decided not to take it any further given (in no particular order):

    (a) issues related to the quality of financial reporting are best dealt with by the corporate regulator ASIC

    (b) the ASX Aware Letter with regards to (among other things) Vmoto's FY24 results exceeding earnings guidance and Vmoto's response on 11 March 2025 (in which it confirmed that the outperformance was not material having regard to ASX's guidance[18] and provided its basis for this conclusion)

    (c) the Vmoto 3Q24 Market Update, which included a more positive outlook, had been released prior to the Buy-back and

    (d) when announcing the Buy-back and Proposed De-listing, the Vmoto board had stressed that the company's share price implied a valuation that was materially below the company's fundamental value.

61. We turned our minds to the potential control effect of the Buy-back and Proposed De-listing. In *Flinders Mines Limited 02 and 03*,[19] the Panel stated that:

    The decision of a company's board to seek to de-list involves the exercise of business or commercial judgement, and may be subject to (among other things) requirements of the applicable listing rules, the discretions and policy of the relevant listing authority, director's duties and minority shareholders remedies. It is not the Panel's role, in the ordinary course, to opine on such judgements or enforce requirements for which other regulators or the courts have primary responsibility. However, the overlap of such requirements does not prevent the Panel exercising its jurisdiction in relation to matters that do fall within its jurisdiction and role. In our view, where de-listing has or is likely to have an effect on control or the acquisition of a substantial interest in a listed company, and appears inconsistent with the

[17] ASX Guidance Note 33: Removal of entities from the ASX Official List, page 9
[18] See paragraph 4(a) of section 7.3 of Guidance Note 8
[19] [2019] ATP 2 at [20]

purposes in section 602, it is appropriate for us to consider whether it gives rise to unacceptable circumstances.

62. Here, we are not satisfied that the allegations made, and the materials provided, in relation to the Buy-back and Proposed De-listing warrant us making further enquiries.

Substantial holder disclosure

63. The applicant submitted that, on 24 February 2025, it had lodged a request with ASIC to investigate the lack of substantial holding notices from two Vmoto shareholders.

64. Vmoto submitted that "*despite it not being Vmoto's obligation to do so, it had notified applicable existing substantial shareholders of the potential need to lodge an applicable substantial shareholding notice*".

65. We consider the lack of disclosure from two of Vmoto's largest shareholders to be concerning, particularly in the context of the Buy-back and Proposed De-listing, where shareholders have no other way of knowing who ultimately holds those shares. Despite Vmoto's submission, no substantial holder notice was lodged by the relevant shareholders during these proceedings.[20]

66. Accordingly, given our concerns, we decided to refer this matter to ASIC for investigation.

Timeliness

67. Under section 657C(3), an application for a declaration under section 657A must be made within two months after the circumstances have occurred or a longer period determined by the Panel.

68. The applicant requested "*favourable consideration of an extension of time because it is now apparent that the dominant Managing Director has been preparing the ground over a much longer period than 2 months to achieve his ambition to take control of the company by reducing the number of shares in minority hands and putting shares into friendly hands*".

69. Vmoto submitted that we should not exercise our discretion to extend time given:

    (a) the 2023 Capital Raising, the Consideration Share Issue and the Small Holdings Sale Facility all occurred some time ago, in 2023 and 2024

    (b) the application failed "*to make any credible allegations of unacceptable circumstances, let alone unacceptable circumstances that are clear and serious*"

    (c) no essential matters supporting the application came to light within the two months preceding the application and

    (d) there was no reasonable explanation for such delay.

70. In its review application, the applicant submitted that it had been denied the knowledge that would have led it to make a timely application given the lack of disclosure from the substantial shareholders (see paragraph 23 above).

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[20] We note that substantial holder notices have since been lodged. We make no comments on these.

71. We note that the Employee Share Issue was within time but represents approximately 2% of Vmoto's issued capital and is therefore unlikely to have a control effect and, on its own, be the subject of a declaration of unacceptable circumstances.

72. Having regard to our decision not to conduct proceedings, we do not consider it necessary to reach a view on whether to formally extend time under section 657C for the making of the application.

Other matters

Notice of Section 249D Meeting

73. The applicant submitted that the voting form provided by Vmoto in relation to the Section 249D Meeting was "*very confusing*" and that the letter from the board in the notice of meeting made false and misleading statements including that the requisitioning shareholders were attempting to obtain effective control of the board and the company without paying any control premium.

74. Vmoto submitted that its directors provided a recommendation to shareholders as to how to vote at the Section 249D Meeting in the notice of meeting which was consistent with the proper exercise of their directors' duties and that "*[n]othing in the EGM Notice or the Proxy Form can properly be considered to be misleading or confusing*".

75. In the circumstances, we did not find the statement of the board in the notice of meeting to be unacceptable.

Shareholder submissions

76. A number of Vmoto shareholders wrote to the Panel executive in support of the submissions made by the applicant. These shareholders consented to the parties being provided with their submissions and the parties were given the opportunity to make submissions in response.

77. We accept that, given the Proposed De-listing, there was considerable market interest in this matter and, on occasion, the Panel will receive comments from interested persons who are not parties. It has discretion to do so, or not to receive them.[21]

78. The initial Panel decided to receive submissions from non-party shareholders and we had the benefit of these in these proceedings. We did not consider that further submissions from Vmoto shareholders were likely to be able to assist us and decided not to receive them, or any submissions made by the parties in response to these submissions.

Allegations of breach of Procedural Rules

79. Vmoto submitted that it had concerns about the applicant breaching its media canvassing undertakings and rule 19 of the Procedural Rules in light of a post made on the stock discussion website HotCopper.

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[21] Procedural Rules, rule 20, *Takeovers Panel Procedural Guidelines 2020* at [4.5]

80. We consider that Vmoto's allegations were substantively unsupported. In any event, it is not unreasonable for a requisitioning shareholder to seek to gain shareholder support ahead of the relevant meeting. We are satisfied, on the evidence provided, that the applicant did not breach the Procedural Rules.

DECISION

81. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Orders

82. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

Karen Phin
President of the sitting Panel
Decision dated 17 March 2025
Reasons given to parties 10 April 2025
Reasons published 14 April 2025

Advisers

Party	Advisers
The Munro Family Super Fund	-
Vmoto Limited	Gilbert + Tobin