



Australian Government

Takeovers Panel

Reasons for Decision

Emu NL [2025] ATP 11

Catchwords:

Decline to conduct proceedings – association – board spill – collective action – evidence

Corporations Act 2001 (Cth), sections 12, 249D, 657C, 671B

Takeovers Panel Procedural Rules 2020, rules 5 and 9(1)

Takeovers Panel Procedural Guidelines 2020, 5.4(e)

ASIC Regulatory Guide 128: Collective action by investors

Global Lithium Resources Limited 02R [2025] ATP 4, Aurora Absolute Return Fund [2019] ATP 14, Aguiá Resources Limited [2019] ATP 13, Auris Minerals Limited [2018] ATP 7, Dragon Mining Limited [2014] ATP 5, Mount Gibson Iron Limited [2008] ATP 4, Orion Telecommunications Ltd [2006] ATP 23, Austral Coal Limited 03 [2005] ATP 14

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

INTRODUCTION

1. The Panel, Bruce Cowley (sitting President), Marina Kelman and Georgina Varley, declined to conduct proceedings on an application by Emu NL in relation to its own affairs. The application concerned an alleged association in the context of a requisitioned board spill meeting. The Panel considered that the applicant did not provide a sufficient body of material to justify the Panel making further enquiries and that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

Coolibah	has the meaning given in paragraph 3
Emu	Emu NL
Farris	has the meaning given in paragraph 3
Interested Persons	has the meaning given in paragraph 8
Madini	has the meaning given in paragraph 3
Mayfair	has the meaning given in paragraph 3
MPS	Martin Place Group Pty Ltd
Oakmount	has the meaning given in paragraph 3
Placement	has the meaning given in paragraph 4

Requisition Meeting	has the meaning given in paragraph 11
Requisition Notice	has the meaning given in paragraph 9
Requisitioning Shareholders	has the meaning given in paragraph 9
Wayburn	has the meaning given in paragraph 3

FACTS

3. Emu NL is an ASX-listed copper exploration company (ASX code: EMU). Its current directors are Mr Peter Thomas, Mr Tim Staermose and Mr Roland Bartsch. Each of following persons are shareholders in Emu:
 - (a) Wayburn Holdings Pty Ltd (**Wayburn**), an entity connected to Mr Vernon Wills
 - (b) “Madini Minerals” (**Madini**), an entity connected to Mr Iain Macpherson
 - (c) Farris Corporation Pty Ltd as trustee for the Farris Family Trust (**Farris**)
 - (d) Oakmount Nominees Pty Ltd as trustee for the Narromine Super Fund (**Oakmount**)
 - (e) Mayfair Communications Pty Ltd (**Mayfair**) and
 - (f) Coolibah WA Pty Ltd as trustee for the Wippl Family Superannuation Fund (**Coolibah**).
4. On 21 October 2024, Emu announced that it had agreed to place up to 61 million shares at \$0.025 per share to sophisticated and professional investors to raise up to \$1.525 million to fund exploration within its Georgetown project in Queensland and for general working capital (**Placement**). The Placement was managed by MPS, of which Mr Barry Dawes is the sole Director and Principal, and was to be effected in two tranches with 21 million shares to be issued forthwith under Emu’s placement capacity¹ and the balance to be issued subject to and upon shareholder approval being obtained at Emu’s Annual General Meeting (**AGM**).
5. Also on 21 October 2024, Emu issued the first tranche of Placement shares. Relevantly, the following persons first acquired shares in Emu at this time:

Shareholder	No. of shares
Farris	4,000,000
Oakmount	3,000,000
7 other persons	11,000,000
	18,000,000

¹ Pursuant to ASX Listing Rules 7.1 and 7.1A

6. On 2 December 2024, Emu announced the results of its AGM, including that:
 - (a) Mr Gavin Rutherford (a director of Emu at the time) had requested immediately before the meeting that he did not wish to be put up for re-election and that resolutions regarding his re-election and receipt of options had been withdrawn
 - (b) a “second strike” had occurred in relation to the adoption of the remuneration report, with approximately 33.37% of votes cast against it
 - (c) the board spill motion put to shareholders as a result of the second strike did not carry, with approximately 30.66% of votes cast in favour of it and
 - (d) the resolution regarding the approval of the second tranche of the Placement carried.
7. The 2 December 2024 announcement also included disclosure regarding board changes which noted (among other things) that:
 - (a) Emu considered it was entering a very important new phase in its history with developments at its Yataga Copper Project at Georgetown where there had been highly encouraging emerging evidence from the numerous geochemistry, structural analyses and geophysical surveys and
 - (b) Emu had appointed Mr Bartsch as a non-executive technical director.
8. On 16 December 2024, Emu issued the second tranche of Placement shares. Relevantly, the following persons (**Interested Persons**²) held shareholdings as follows immediately after this share issue:

Shareholder	No. of shares
Farris ³	4,300,000
Oakmount	3,000,000
Mayfair	2,000,000
Coolibah	2,000,000
Wayburn	3,600,000
Madini	5,031,574
19 other persons including those persons in the third row of the table at paragraph 5	41,540,853
	61,472,427

² Emu used the defined term “Interested Persons” in its application. We have adopted this term in these reasons for convenience. However, note that its meaning differs from the meaning given to that term in the Panel’s Procedural Rules: see paragraph 19(b) below

³ Farris also acquired a further 200,000 Emu shares on 3 January 2025

9. On 23 January 2025, Emu announced that it had received a notice under section 249D⁴ (**Requisition Notice**) signed by Mayfair, Coolibah, Oakmount and Farris (together, the **Requisitioning Shareholders**) to consider resolutions to remove Mr Thomas and Mr Bartsch as directors of Emu and to appoint Mr Keith Rowe and Mr John Anderson as directors.
10. The 23 January 2025 announcement included a notice of initial substantial holder on behalf of the Requisitioning Shareholders and others including Mr Rowe and Mr Anderson disclosing a voting power of 8.89% and an association pursuant to sections 12(2)(b) and 12(2)(c) by reason of the Requisition Notice.
11. On 11 February 2025, Emu released a notice of meeting in relation to the Requisition Notice with the meeting (**Requisition Meeting**) to be held on 18 March 2025. The notice of meeting included:
 - (a) A statement that the Emu directors unanimously recommend shareholders vote against all four resolutions, which noted (among other things) that the Requisitioning Shareholders have failed to advance a superior plan for Emu and that their conduct is consistent with an attempt to takeover Emu by stealth rather than via a formal takeover.
 - (b) A statement from the Requisitioning Shareholders which noted (among other things) that:
 - (i) the Requisitioning Shareholders collectively have extensive experience across capital markets, property and mining
 - (ii) the recent AGM results are reflective of a loss of trust and growing concern with the directors' actions and decision making
 - (iii) the Requisitioning Shareholders held concerns in relation to the composition and independence of the board and its failure to listen to shareholders and
 - (iv) the key strategy under new leadership would include rationalizing the current asset base, pursuing new opportunities with 'projects of size and scale' and introducing sufficient new capital to ensure Emu is funded to explore and develop projects of significance.
12. On 11 March 2025, Emu announced an update in relation to its Yataga Copper Project including that work carried out had indicated a potential large scale copper mineralised system.
13. On 12 March 2025, Emu released an Appendix 2A disclosing that it had issued 1,222,222 shares on that date "*for service rendered*".

⁴ 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)

14. On 18 March 2025, Emu announced that on 17 March 2025 it had terminated with immediate effect its contract for the services of Mr Douglas Grewar as CEO of the company due to “*the very recent discovery*” of breaches of contract.
15. Also on 18 March 2025, Emu announced that it had resolved to postpone the Requisition Meeting to 16 April 2025 citing as reasons the termination of its CEO on 17 March 2025 and the “*ongoing investigation into circumstances which appear to the board to be unacceptable, including those associated with [the termination of its CEO for breaches of contract]*”.⁵

APPLICATION

16. By application dated 3 April 2025, Emu sought a declaration of unacceptable circumstances. Emu submitted (among other things) that:
 - (a) The Interested Persons are associates in relation to Emu and are acting in concert with the intention of removing the majority of the incumbent board and replacing them with those who are sympathetic towards the alternate business goals of the Interested Persons.
 - (b) A large proportion of the Interested Persons first became members, or alternatively increased their holdings, in December 2024, one month before the Requisition Notice.
 - (c) The Interested Persons collectively hold 31.86%⁶ in Emu and have failed to fully disclose their holdings to the market.
 - (d) The Interested Persons have:
 - (i) a common history as to time
 - (ii) a common history as to contact, all becoming members through placements associated with Dawes and/or MPS and
 - (iii) a common history of voting, both at the AGM and more recently by the lodgment of proxies.
 - (e) The manner in which the Interested Persons have exercised their voting power at the AGM and by way of lodgment of proxies after 21 January 2025 and before 18 March 2025, the acquisitions by Interested Persons in December 2024 and later, and the failure to comply with section 671B, is unacceptable.
17. Emu did not seek any interim orders.
18. Emu sought final orders including to the following effect:

⁵ The solicitors for the Requisitioning Shareholders subsequently sent Emu a letter contending that the postponement of the meeting was unlawful and threatening legal proceedings against Emu. We were informed by Emu that as at the date of the application no such proceedings had been commenced. Emu subsequently further postponed the Requisition Meeting and it is currently scheduled for 14 May 2025. We make no comment on the validity of Emu’s postponements of the Requisition Meeting

⁶ Based on 193,601,409 total shares on issue

- (a) imposing a voting restriction on the Interested Persons
- (b) requiring the Interested Persons to dispose of Emu shares
- (c) requiring the Interested Persons to make corrective disclosure to the market and
- (d) a costs order for Emu's costs of the application.

DISCUSSION

19. We have considered all the materials but address specifically only those we consider necessary to explain our reasoning. We note the following:
- (a) Emu did not provide copies of certain documents referred to in its application, including the Requisition Notice, the substantial shareholder notice of 23 January 2025 and the notice of meeting of 11 February 2025. These materials were publicly available on the ASX market announcements platform where we were able to access them.⁷ Nevertheless, failing to provide such material with the application did not assist us and we remind parties that any document intended for the Panel should be accompanied by any relevant material including market announcements.⁸
 - (b) Mr Dawes and Mr Grewar were not initially given a copy of the application by Emu. We considered they were both an “interested person”⁹ and decided to direct that Emu give them a copy of the application. We invited Mr Dawes and Mr Grewar to make a preliminary submission, which they each did. As set out below, these preliminary submissions, particularly that of Mr Dawes, provided considerable additional information relating to the circumstances the subject of the application. In the circumstances, we considered it was appropriate to give Emu an opportunity to make submissions in response to Mr Dawes’ and Mr Grewar’s preliminary submissions by way of a preliminary question, which Emu did.¹⁰
 - (c) While each of the Interested Persons were given a copy of the application, only three of the Interested Persons became parties to the proceeding.¹¹ In addition to the preliminary submissions of Mr Dawes and Mr Grewar, we also received a preliminary submission from Mr Wills and a short preliminary submission from another Interested Person who did not become a party.
20. Emu submitted that there had been an accumulation and exercise of voting power “*demonstrative of a clear association between the Interested Persons*” and that the following events were not a mere coincidence:

⁷ See the Panel’s Procedural Guidelines at 5.4(e)

⁸ Rule 9(1) of the Panel’s Procedural Rules

⁹ See the definition of this term in rule 5 of the Panel’s Procedural Rules

¹⁰ In addition, we note that out of process submissions were made by Mr Grewar, Mr Dawes and Emu which we decided to receive

¹¹ As set out in the final page of this document

- (a) based on a post-meeting analysis of the voting at its AGM, each of the Interested Persons listed as recipients of shares under the first tranche of the Placement in paragraph 5 voted “*as a cabal*” both against the remuneration report and in favour of the resulting board spill motion
- (b) following the failure to carry the spill motion at the AGM, the same persons proceeded to “*increase their holdings and/or bring further person(s) into the cabal*” via the second tranche of the Placement only one month before the issue of the Requisition Notice and
- (c) within a short time of the Requisition Notice being given, a very large number of proxy votes were received by Emu and each Interested Person has lodged a proxy in favour of all resolutions proposed by the Requisition Notice.

21. Emu further submitted that:

- (a) before and after Mr Rutherford’s retirement, Mr Dawes had made a number of approaches to Mr Thomas expressing the view that Mr Grewar should be elevated to the board and that Mr Dawes was “*not happy*” with Mr Bartsch’s appointment to the board and
- (b) Mr Dawes had asked Mr Thomas how the voting and proxies in relation to the Requisition Meeting were looking, to which Mr Thomas replied “*line ball*” and in the days after this conversation a “*flood of proxy votes in favour*” were received.

22. Emu also submitted that the event which “crystallised” the need for the application was Emu’s discovery on 16 March 2025 of “*substantial breaches of duty*” by Mr Grewar¹² including:

- (a) “*the apparent dissemination of Emu’s confidential information to one or more Interested Persons (including reports and investigations into ongoing EMU operations which had not been made publicly available)*” and
- (b) “*material which suggested that Mr Grewar was known to and associated with a number of other persons, including Barry Dawes, Vern Wills and Ian McPherson [sic] - the latter of which were associated with entities which either were, or would become, corporate members of EMU, with a view to removing the incumbent board so that EMU could refocus its operations on a copper and gold project in the Philippines called Mabuhay*”.

23. In support of this submission, Emu provided with its application:

- (a) a description of “background” information including (among other things) that:
 - (i) in 2021, Emu carried out due diligence on Tolu Minerals Limited, of which Mr Wills and Mr Anderson were “promoters” at the time, and of which Mr Anderson and Mr Macpherson are currently directors

¹² Emu submitted that before making this discovery, it had “*little to no reason to suspect (and did not suspect) that Grewar, with entities associated with either Dawes, Wills or McPherson [sic] had been attempting to marshal voting power in such a way so as to remove the majority of the incumbent board*”

- (ii) Mr Dawes is listed as the Joint Lead Manager to Tolu Minerals Limited's ASX-listing of November 2023
 - (iii) for some time during late 2024 and into early 2025, the Emu board had been concerned about Mr Grewar's conduct noting that he had denied the board clearance to trade contending the market was not fully informed, but to the board nothing appeared to enliven the obligation to disclose and
 - (iv) a review of Mr Grewar's email account revealed "*a lot of work done on the Mabuhay copper/gold project in the Philippines, not on account of Emu*" and Mr Grewar is the manager of a new venture incorporating the Mabuhay project along with Mr Wills and Mr Macpherson.
- (b) an email of 17 January 2024 from Mr Grewar to Mr Wills and Mr Macpherson attaching a discussion paper relating to "Mabuhay"¹³ and stating "[a] quick and dirty look at Potential. Based on facts, I don't think is [sic] out of the ballpark and plenty of upside to boot" and
- (c) several emails between Mr Grewar and Mr Dawes from the period 23 February 2025 to 11 March 2025 relating to the Yataga Copper Project including photographs of rocks and the content of draft versions of Emu's ASX announcement of 11 March 2025.
24. Emu also submitted that to the extent that it relies upon circumstances which occurred more than 2 months ago, the Panel should exercise its discretion to extend time to hear the application¹⁴ including because circumstances were "*kept hidden from EMU's knowledge*" for a period sufficient to allow the time limit to expire.¹⁵
25. Mr Dawes submitted that MPS was mandated by Emu to raise new equity funds and assist with establishing a stronger shareholder base that would support the considerable capital raisings required to progress with the Yataga Copper Project. He also submitted that:
- (a) placements were made to a range of "*unrelated shareholders*" who were introduced to the company and its prospects
 - (b) he was unaware of any MPS client voting at the AGM
 - (c) he "*had no idea the 249D was coming*"
 - (d) at the time of having the conversation with Mr Thomas referred to in paragraph 21(b) he was "*quite disinterested in the outcome*" of the Requisition Meeting and advised Mr Thomas that he would round up his clients to vote in favour of the existing board, but had not at that stage opened the proxy form letters and booklet in relation to the Requisition Meeting

¹³ A copy of the discussion paper was not included

¹⁴ See section 657C

¹⁵ Citing *Austral Coal Limited 03* [2005] ATP 14 at [19]

- (e) there were deficiencies regarding the proxy form in relation to the Requisition Meeting including because it did not provide space for shareholders to give their SRN or HIN and *“provided a leading action by highlighting a crossing the Against column”*
 - (f) on requesting client identified proxy forms for a number of client shareholders and his own shareholding, he found that these had already been pre-filled with voting *“for”* the current directors
 - (g) Emu paid the company it engaged to advise on the Requisition Meeting A\$30,000 + GST by way of the share issue on 12 March 2025 and those shares were voted in favour of the current directors
 - (h) he considered that the *“use of EMU NL funds and the issue of shares during the 249D period was not permitted and became quite angry and decided to support the 249D”* and *“spoke to a number of clients who had also seen the ploy and were equally concerned”* and
 - (i) the proxy votes in favour of the Requisition Notice *“reflect the dissatisfaction of shareholders with the Notice of Meeting Booklet which appeared to be potentially misleading.”*
26. In relation to Emu’s submission that Mr Dawes advocated for Mr Grewar’s elevation to the board, Mr Dawes submitted that he had no interest in changing the control of the board and had *“only wished for a geologist familiar with Queensland geology and porphyry copper geology in particular and based to the east Coast to be appointed”*. He also submitted that:
- (a) he considered it was a poor strategy to have three or more non-executive directors running an exploration company
 - (b) he had known Mr Grewar for about 20 years including through serving together on the board of another company
 - (c) on numerous occasions he had indicated to Mr Thomas that his clients would like to see a stronger board and
 - (d) it was *“clear that EMU NL might have a very significant deposit of mineralisation and that the current Board with a terrible company performance record would not be able to attract the large amount of capital required to carry out the drilling program.”*
27. In relation to Emu’s submission concerning contact between Mr Dawes and Mr Grewar during the period 23 February 2025 to 11 March 2025, Mr Dawes submitted that:
- (a) *“As broker to the company and as a geologist I requested and received technical information on this unique mineralisation to satisfy my due diligence.”*
 - (b) He requested photographs of rock and their assays in connection with the preparation of a research note to his clients which was published on 11 March 2025 after the release of Emu’s update on the Yataga Copper Project and not circulated to any person prior to that announcement.

28. Mr Dawes also submitted that he had no knowledge of the Mabuhay project.
29. Mr Grewar submitted (among other things) that:
- (a) He was *“unaware of any 249D activity although [he] was hardly surprised given increased conversations with shareholders relating to EMU performance over the past 2 years.”*
 - (b) He was not *“aligned with any shareholder or shareholders to facilitate a 249D”*.
 - (c) The ASX announcement of 11 March 2025 was very important for Emu and was prepared to update the market of the geophysics results from two programs completed in late 2024.
 - (d) Mr Dawes had advised him in February 2025 that he wished to prepare a newsletter for his clients and wanted to use photos of rock samples in the newsletter.
 - (e) Mr Grewar issued a draft ASX release to Mr Dawes and prepared some detail about the rock photos for his use under confidentiality to ensure his newsletter would best market the project and align with the material information in the ASX release.
 - (f) Mr Wills and Mr Macpherson are *“known to [Mr Grewar] and have been assisting [him] since September 2022 in trying to secure the Mabuhay Project for private purposes”* in relation to which Mr Grewar requested and received approval from Emu board members to pursue.¹⁶
30. Mr Wills submitted (among other things) that:
- (a) he met Mr Grewar in December 2020 and had been asked by Mr Grewar if he was interested in the Mabuhay project
 - (b) there was no proposal to use Emu as a vehicle for listing/hosting the Mabuhay asset
 - (c) he became aware of Emu’s appointment of MPS in early 2024 and had participated in Emu capital raisings through Wayburn and had purchased 3.6 million shares (around 1.8%) and
 - (d) Emu had participated in designing proxy forms to disadvantage shareholders.
31. The other preliminary submission we received was also critical of the process of distribution of proxy forms in relation to the Requisition Meeting.
32. In its submissions in response to the preliminary question, Emu submitted (among other things) that:
- (a) Very large parts of both of Mr Dawes’ and Mr Grewar’s preliminary submissions traverse factual matters which are not germane to the application

¹⁶ Mr Grewar supplied emails dated 14 September 2022 which were consistent with this submission

and neither submission assists the Panel in its consideration of the matter and it is open to the Panel not to take them into account.

- (b) Mr Grewar's submission is lacking in probative value and is readily seen as self-serving given his recent termination of services as the CEO of Emu.
 - (c) Mr Dawes' submission makes it plain that for his own reasons he did decide to support the spill motion.
 - (d) It is incorrect of Mr Dawes to suggest that a blank (or otherwise not pre-completed) proxy form was not provided, and the material circulated by the share registry makes it plain that any recipient of the document was able to select for, abstain or against.
33. As set out in *Agua Resources Limited*,¹⁷ in considering whether to conduct proceedings on the question of whether shareholders are associated in the context of a board spill, the Panel applies its well-established principle that the applicant must demonstrate a sufficient body of evidence of association to convince the Panel as to that association, albeit with proper inferences being drawn.¹⁸
34. As mentioned above, the Requisitioning Shareholders disclosed an association in relation to Emu and collective voting power of 8.89% in their substantial holding notice disclosure of 23 January 2025. However, Emu asserts that the association is much broader than that disclosed and encompasses all of the Interested Persons, such that the collective voting power is 31.86%. The Panel in *Agua Resources Limited* noted that it may be more difficult for an applicant to demonstrate a sufficient body of probative material where it is alleged that a large number of parties have recently commenced acting in concert.¹⁹ The application identifies 25 shareholders as Interested Persons.
35. Emu primarily relies on matches between the voting of Interested Persons at the AGM and their proxy voting in relation to the Requisition Meeting, along with accumulations of shares having been made shortly before the Requisition Notice via the Placement. As has been observed by previous Panels, shareholders voting in the same manner is usually not sufficient evidence to demonstrate an association unless there is an understanding or an agreement entered into regarding the exercise of voting rights.²⁰ Emu did not point to any communications or other circumstantial material supporting such an understanding or agreement between the Interested Persons themselves.
36. We had difficulty ascertaining from the application how Mr Dawes, Mr Grewar, Mr Wills or Mr Macpherson fit in to the alleged association. However, we take Emu to be suggesting that the Interested Persons were connected through Mr Dawes in the

¹⁷ [2019] ATP 13

¹⁸ *Agua Resources Limited* [2019] ATP 13 at [24(b)] citing *Mount Gibson Iron Limited* [2008] ATP 4 at [15]

¹⁹ *Agua Resources Limited* [2019] ATP 13 at [24(b)] citing *Auris Minerals Limited* [2018] ATP 7 at [20]

²⁰ *Orion Telecommunications Ltd* [2006] ATP 23 at [111]; *Global Lithium Resources Limited 02R* [2025] ATP 4 at [51]

main²¹ (for example, as “hub and spokes”²² where Mr Dawes was the hub and each of the Interested Persons were the spokes, or some other similar arrangement where Mr Dawes was acting as a conduit between the Interested Persons). Mr Dawes (via MPS) was engaged to manage the Placement and was responsible for sourcing investors to participate in the Placement. He admitted in his submissions that he had discussions with placees following release of the notice of meeting in relation to the Requisition Meeting including regarding concerns about the proxy forms and the share issue of 12 March 2025.²³ In the circumstances, we did not consider these discussions were likely to indicate an association.

37. Having regard to the materials before us and noting the surrounding circumstances including the two consecutive strikes on the remuneration report, we were inclined to the view that the voting matches reflected like-mindedness on the part of the Interested Persons or collective action conduct unlikely to constitute acting as associates or entering into a relevant agreement giving rise to a relevant interest.²⁴
38. Emu also submitted that Mr Grewar and others were seeking to refocus Emu’s operations on the Mabuhay project in the Philippines.²⁵ ASIC Regulatory Guide 128 notes that collective action that seeks to change the composition of the board for the purpose of facilitating the investors proposing the change pursuing their plans for the company may attract ASIC scrutiny.²⁶ However, in our view we were not provided with probative material in support of this claim; the emails supplied with the application and Emu’s submissions regarding links between individuals involved in Mabuhay or Tolu Minerals Limited did not take us very far²⁷.
39. As noted in *Dragon Mining Limited*²⁸, the Panel has limited investigatory powers and an applicant must do more than make allegations of association and rely on the Panel to substantiate them. We consider Emu fell short of providing a sufficient body of material to warrant us making further enquiries in relation to its application.
40. We disagree with Emu’s contention that the preliminary submissions of Mr Dawes and Mr Grewar are not germane. We took these preliminary submissions into account in reaching our decision and we were not moved by Emu’s submissions in response to them.²⁹
41. Having regard to our decision not to conduct proceedings, we do not consider it necessary to reach a view on whether to extend time under section 657C for the making of the application.

²¹ See paragraphs 16(d)(ii), 21(b), 22(b) and footnote 12

²² See *Aurora Absolute Return Fund* [2019] ATP 14 at [49]-[50]

²³ See paragraph 25

²⁴ See Table 1 of ASIC Regulatory Guide 128: Collective action by investors

²⁵ See paragraph 22(b)

²⁶ ASIC Regulatory Guide 128: Collective action by investors, page 15

²⁷ See paragraph 23

²⁸ [2014] ATP 5 at [59]-[60]

²⁹ See paragraph 32

DECISION

42. 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).

Bruce Cowley
President of the sitting Panel
Decision dated 16 April 2025
Reasons given to parties 13 May 2025
Reasons published 19 May 2025

Takeovers Panel

Reasons – Emu NL
[2025] ATP 11

Advisers

Party	Advisers
Emu NL	Norton Smith
Madini Minerals	-
Mr Vernon Wills	-
Mr Douglas Grewar	-