



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP25/033

Monday, 19 May 2025

Emu NL 03 – Panel Receives Application

The Panel has received an application from Wayburn Holdings Pty Ltd in relation to the affairs of Emu NL (ASX: EMU).

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

Emu is a precious and base metals explorer that is listed on ASX.

The applicant is a shareholder of Emu.

On 20 January 2025, Emu received a section 203D¹ notice noting an intention by four shareholders (the **requisitioning shareholders**) to move a resolution to remove two of the three directors of Emu.

On 21 January 2025, the requisitioning shareholders served a section 249D notice on Emu requisitioning an extraordinary general meeting to consider resolutions to remove two of the three directors of Emu and replace them with two nominee directors.

On 11 February 2025, Emu released a notice of EGM to consider the resolutions. The EGM was scheduled for 5:00pm AWST on 18 March 2025. The notice of meeting provided that:

“Pursuant to a determination under Regulation 7.11.37 of the Corporations Regulations 2001 (Cth), the persons eligible to vote at the Meeting are those registered as Shareholders at 5:00pm AWST on Sunday, 16 March 2025.”

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

The EGM was adjourned twice – first, for 28 days to 5:00pm AWST on 16 April 2025 and second, for a further 28 days to 5:00pm AWST on 14 May 2025. In the announcement of the further adjournment, Emu stated that:

“Pursuant to section 250B of the Corporations Act 2001 (Cth), proxy voting will be accepted up to 48 hours before that meeting, namely up to 5:00pm AWST on Monday 12 May 2025.”

On 14 May 2025 at 3:07pm AWST Emu released an Appendix 2A for quotation of 17,647,059 ordinary fully paid securities followed by a further announcement at 3:12pm AWST titled “Placement and Cleansing Notice” stating that Emu had agreed to place 17,647,059 fully paid ordinary shares (the **placement shares**) at \$0.017 per share to sophisticated and professional investors to raise \$300,000.

At the EGM, later that day, the chair directed that all resolutions be resolved on a poll and declared that *“the votes in favour of the resolution was 62,864,900, the votes against the resolution was 74,435,618”*.

The applicant submits, based on evidence provided by Emu in a previous matter before the Panel,² that the result of the vote was *“drastically different”* from the proxies received by Emu at that time which indicated that the resolutions proposed by the requisitioning shareholders were likely to be passed.

The applicant submits that the chair at the EGM refused to disclose whether the placement shares had been admitted to vote by a lodged proxy and requests to inspect the proxy forms have gone unanswered to date.

The results of the EGM have not been announced to ASX as at the date of the application and there has been no disclosure of the identity of the placees of the placement shares.

The applicant submits that Emu’s conduct infringes the principles expressed in section 602, namely, shareholders do not know the identity of the placees and without identification of the placees, the applicant is unable to ascertain whether there has been a prohibited exercise of voting rights to shares acquired after the cutoff date for eligibility to vote at the EGM (or a breach of section 606).

If the placees were permitted to vote, the applicant submits that the directors have unfairly and improperly attempted to retain control against the wishes of the majority of shareholders.

The applicant seeks an interim order that Emu produce to the Panel certain information including all proxy forms received by Emu in connection with the EGM and details of the placees of the placement shares.

² See *Emu NL* (see [TP25/021](#) and [TP25/023](#)) – a shareholder of the applicant was a party to *Emu NL*. See also *Emu NL 02R* (see [TP25/024](#) and [TP25/027](#)).

The applicant seeks final orders:

- to set aside the poll on 14 May 2025 and declare the outcome of the poll disallowing any votes by placees and allowing votes unreasonably or improperly disallowed,
- to restrain the placees from exercising any voting or other rights for a period of six months from the date of issue and
- that the costs of the applicant be paid by the three current directors of Emu.

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