



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP25/056

Friday, 11 July 2025

Emu NL 03 – Orders

The Panel has made final orders (Annexure A) in relation to an application dated 16 May 2025 by Wayburn Holdings Pty Ltd in relation to the affairs of Emu NL (see [TP25/33](#)).

Background

On 27 June 2025, the Panel made a declaration of unacceptable circumstances in relation to the affairs of Emu NL (**Emu**) (see [TP25/51](#)).

On the day of the extraordinary general meeting convened by Emu¹ to consider (among other things) resolutions to remove two of Emu’s directors (**EGM**), Emu issued 17,647,057 shares (**New Shares**) to four placees (**Placees**). The Panel considered (among other things) that:

- The actions of the Emu directors in issuing the New Shares to the Placees, and the timing, manner and quantum of issue, facilitated the acquisition of a substantial interest in Emu by one or more Placees that the Emu directors could reasonably expect would be voted at the EGM and would likely be voted in support of the incumbent directors.
- The timing of the placement had the potential to distort voting at the EGM.

The Panel also found (among other things) that:

- Emu did not update or clarify the record date for voting following the postponements of the EGM.
- By not facilitating access to proxy forms that included the necessary shareholder identification information, other than proxy forms that were prepopulated with voting directions marked “AGAINST” the resolutions, Emu

¹ The Emu board initially convened the extraordinary general meeting for 18 March 2025, later postponed twice, and ultimately held on 14 May 2025.

made it more difficult for shareholders to vote in favour than against the resolutions.

- There was confusion over the accuracy and integrity of proxies and voting results over an extended period, from the original scheduled EGM on 18 March 2025 to beyond the 14 May 2025 date on which the meeting was eventually held and beyond the commencement of the Panel proceedings on 28 May 2025.
- The overall manner in which the EGM was conducted, including the two postponements, the placement on the day of the EGM and the lack of clarity and disclosure with regards to Emu's several recounts of the proxies, did not give Emu shareholders or the market a sufficient basis for confidence as to the outcome of the EGM and the subsequent composition of the Emu Board, preventing or inhibiting the acquisition of control over Emu shares taking place in an efficient, competitive and informed market.
- One of the Placees, Northmead Holdings Pty Ltd, failed to lodge a substantial holder notice within the required timeframe, in breach of section 671B(3).

Orders

The Panel has made orders that Emu must convene and hold a further general meeting (**New Meeting**) to consider all resolutions previously put at the EGM on 14 May 2025, except resolution 2 (removal of Mr Roland Bartsch as a director)² and any additional resolution for which notice under section 203D is given before the New Meeting is called.

To ensure the integrity of the New Meeting, the Panel also ordered that Emu:

- permit electronic voting
- provide a pre-filled proxy form with each shareholder's name, address, and holder identification number and ensure no other proxy form is issued with the notice of meeting
- not provide any indication in the proxy form as to how shareholders should vote or make it easier to vote either for or against a resolution
- provide a draft notice of meeting and proxy form to the Panel by 18 July 2025 and issue the final notice and proxy form, in a form acceptable to the Panel, by 25 July 2025
- appoint an independent scrutineer from a list provided by the Panel to oversee the treatment of proxies, validity and counting of all votes cast at the New

² Emu announced, on 17 June 2025, that Mr Bartsch had resigned as a director of Emu.

Meeting and, if there is a disagreement between the independent scrutineer and the chair of the meeting in relation to the result of the meeting:

- Emu must disclose the number of proxies and votes that were the subject of the disagreement and
- If the disputed votes had the potential to affect the outcome of any resolution, the independent scrutineer must provide a report to the Panel on those disputed votes.
- assist the scrutineer and not cancel or postpone the New Meeting without the consent of any member of the Panel and
- hold the New Meeting within 30 calendar days of issuing the notice.

The Panel also ordered that the New Shares, and any further shares issued before the New Meeting, must not be voted at the New Meeting.

Parties have liberty to apply for further orders until 14 calendar days after the outcome of the New Meeting is announced on ASX.

The sitting Panel was Stephanie Charles (sitting President), Alberto Colla and John McGlue.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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ANNEXURE A

CORPORATIONS ACT

SECTION 657D

ORDERS

EMU NL 03

The Panel made a declaration of unacceptable circumstances on 27 June 2025.

THE PANEL ORDERS

1. Emu must convene and hold a further general meeting (**New Meeting**) in accordance with Orders 2 to 8 to consider the following resolutions:
 - (a) all resolutions previously put at the EGM, other than resolution 2 'Removal of Mr Roland Bartsch as a Director' and
 - (b) any additional resolution of which notice under section 203D is given before the New Meeting is called.
2. Emu must, in relation to the New Meeting:
 - (a) permit shareholders to vote electronically
 - (b) provide a proxy form for the New Meeting that is pre-filled with each shareholder's name, address and shareholder identification number
 - (c) ensure that no other proxy form is issued with the notice of meeting or included in the same electronic communication or, in the case of physical mail, the same envelope
 - (d) not provide any indication in the proxy form as to how shareholders should vote or make it easier to vote either for or against a resolution
 - (e) provide to the Panel for review, as soon as practicable and by no later than 18 July 2025, a draft notice of meeting and proxy form
 - (f) issue the notice of meeting and proxy form, in a form acceptable to the Panel, as soon as practicable and by no later than 25 July 2025 and
 - (g) hold the New Meeting no later than 30 calendar days after the issue of the notice of meeting.

3. The 17,647,057 ordinary fully paid Emu shares issued on 14 May 2025 under the placement made by Emu on that day must not be voted at the New Meeting.
4. Any further shares issued by Emu from the date of these orders until, and including, the date of the New Meeting must not be voted at the New Meeting.
5. No later than 7 calendar days before the New Meeting, Emu must appoint an independent scrutineer from a list of names provided by the Panel (**Independent Scrutineer**), to oversee the treatment of proxies, validity and counting of all votes cast at the New Meeting, to the satisfaction of the Independent Scrutineer.
6. If the treatment of proxies, validity, and counting of all votes cast are not all to the satisfaction of the Independent Scrutineer:
 - (a) Emu must disclose in its announcement of the result of the meeting to ASX, the numbers of proxies and votes (for, against, or abstaining) that were the subject of disagreement between the Independent Scrutineer and the chair of the meeting (**Disputed Votes**) and
 - (b) If the Disputed Votes had the potential to affect the outcome of any resolution considered at the New Meeting, the Independent Scrutineer must provide a report to the Panel on those Disputed Votes, for the Panel to consider in connection with any application for further orders.
7. Emu must provide all necessary assistance to the Independent Scrutineer in relation to Orders 5 and 6.
8. The directors of Emu must not exercise any powers under Rule 44 of the Constitution to cancel or postpone the holding of the New Meeting, without the consent of any member of the Panel.
9. The parties to these proceedings have liberty to apply for further orders, until 14 calendar days after the outcome of the New Meeting is announced on ASX, including as to who should bear:
 - (a) the costs of the parties to the proceedings and
 - (b) the costs of the New Meeting and the Independent Scrutineer.
10. Interim Order 1 made by the Panel on 28 May 2025 continues with full force and effect until 14 calendar days after the outcome of the New Meeting is announced on ASX.

Interpretation

11. In these orders the following terms apply.

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| Disputed Votes | As defined in Order 6(a) |
| EGM | Extraordinary general meeting of Emu NL held on 14 May 2025 |
| Emu | Emu NL |
| Independent Scrutineer | As defined in Order 5 |
| New Meeting | As defined in Order 1 |

Allan Bulman
Chief Executive, Takeovers Panel
with authority of Stephanie Charles
President of the sitting Panel
Dated 10 July 2025