



Australian Government

Takeovers Panel

Reasons for Decision Keybridge Capital Limited 18R [2025] ATP 17

Catchwords:

Decline to conduct proceedings – board spill – announced bid – triggered conditions – frustrating action

Corporations Act 2001 (Cth), sections 128, 198G, 203D, 249F, 259C, 259E

Guidance Note 12: Frustrating Action, Guidance Note 19: Insider Participation in Control Transactions

In the matter of Yowie Group Ltd [2025] NSWSC 648, Eastern Field Developments Limited v Takeovers Panel [2019] FCA 311

Keybridge Capital Limited 17 [2025] ATP 15, Benjamin Hornigold Limited 12 [2023] ATP 10, Benjamin Hornigold Limited 08R, 10R & 11R [2019] ATP 22, Molopo Energy Limited 09 [2017] ATP 22, LV Living Limited [2005] ATP 5, Pinnacle VRB Ltd 05 [2001] ATP 14, Taipan Resources NL 07 [2000] ATP 18

Interim Order	IO Undertaking	Conduct	Declaration	Final Order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The review Panel, James Burchnall (sitting President), Louise Higgins, and Richard Phillips, declined to conduct proceedings on an application by Yowie in relation to the affairs of Keybridge. The application concerned, among other things, actions by Keybridge seeking to convene a meeting to change the composition of the Yowie board, which Yowie alleged constituted a frustrating action by triggering a condition of Yowie's announced off-market takeover bid for Keybridge. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

Condition 9	has the meaning given in clause 13
Court Proceedings	has the meaning given in clause 19
Keybridge	Keybridge Capital Limited
Proposed Bid	has the meaning given in clause 13
Section 249F Meeting	has the meaning given in clause 14
Yowie	Yowie Group Ltd

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FACTS

3. The facts are set out in detail in the initial Panel's reasons for decision in *Keybridge Capital Limited 17*.¹ Below is a summary of those facts and other relevant facts at the time of the review application.
4. Keybridge is an ASX-listed company (ASX code: KBC).
5. Yowie is an ASX-listed company (ASX code: YOW).
6. Keybridge holds a relevant interest in approximately 58.07% of Yowie.
7. The directors of Keybridge are Messrs Geoffrey Wilson AO, Jesse Hamilton, Martyn McCathie, Sulieman Ravell and Antony Catalano.
8. The directors of Yowie are Messrs Nicholas Bolton, John Patton, Andrew Ranger, Diesel Schwarze and Daniel Agocs.
9. On 1 April 2025, a section 203D² notice was given to Yowie on behalf of Keybridge specifying an intention to move resolutions for the removal of Messrs Patton, Bolton and Ranger from the Yowie board at the next general meeting of Yowie.
10. On 9 April 2025, a second section 203D notice was given to Yowie on behalf of Keybridge specifying an intention to move resolutions for the removal of Messrs Schwarze and Agocs from the Yowie board at the next general meeting of Yowie. Messrs Schwarze and Agocs were appointed to the Yowie board after the first section 203D notice was given.
11. On 24 April 2025, Keybridge sent a "notice of intention to nominate for election" stating that it intends to propose and nominate Messrs Wilson, Hamilton, McCathie, Ravell and Catalano for election at a general meeting of Yowie which occurs at least 30 business days from the date of the notice and at which an election of directors is to be considered.
12. On 1 May 2025, Yowie released an ASX announcement stating (among other things) that "*Yowie has no current plans to convene a general meeting to consider appointments to the board and has not received any request from Keybridge or from any other shareholder to convene a general meeting for that purpose.*"
13. On 9 May 2025, Yowie announced an intention to make an off-market scrip takeover bid for all the issued fully paid ordinary shares in Keybridge, offering 1 Yowie share for each Keybridge share on issue (**Proposed Bid**). The Proposed Bid included the following condition 9 (**Condition 9**):

No change to Yowie board composition

[Keybridge], its directors, officers or associates do not:

¹ [2025] ATP 15. As noted in paragraph 29, we did not receive the initial Panel's reasons before making our decision. The reference here to those reasons is for the benefit of the reader only.

² 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)

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- (a) *Issue a notice pursuant to section 249D, 249F or 249G for the purpose of convening a meeting of Yowie shareholders; or*
 - (b) *Propose a resolution at a meeting of Yowie shareholders; or*
 - (c) *take any actions,*
*that would influence the control or composition of the Yowie board of directors.*³
14. On 16 May 2025, Keybridge made an ASX announcement advising its shareholders to ‘take no action’ in relation to the Proposed Bid, and that it intended to call a section 249F meeting of Yowie (**Section 249F Meeting**).
15. On 19 May 2025, in response to an ASX Query Letter which referred to Yowie’s ASX announcement of 1 May 2025, Yowie stated (among other things):
- (a) *“[n]one of [the section 203D notices of 1 and 9 April 2025 and the notice of 24 April 2025] were validly sent to Yowie by Keybridge as they had not been authorised by Keybridge or its Administrator”*
 - (b) *in relation to the section 203D notices of 1 and 9 April 2025, “Yowie is aware that the court gave relief to certain non-executive directors of Keybridge from their restrictions under s. 198G of the Act prohibiting the use of their power, which would have enabled them to call and arrange a board meeting and put certain resolutions at Keybridge whilst it was in administration. However, Yowie notes that it is also aware that no such board meeting occurred and the notices cannot have been sent by the company with the parties having executed them having no delegated authority of the company to do so. Yowie refers to s. 128(4) in this regard” and*
 - (c) *in relation to the notice of 24 April 2025, “Yowie has confirmed with the administrator of Keybridge that s. 198G approval was not granted for the purpose of sending an intention statement and that he did not authorise the issue of any intention statement. In any event, there was no valid Board meeting authorising the sending of such notice. Accordingly, it could not have been issued by Keybridge”.*
16. On 23 May 2025, Yowie made the initial application seeking a declaration of unacceptable circumstances. Yowie submitted (among other things) that:
- (a) *“Keybridge is seeking to take steps to frustrate the Offer by, wilfully on its own volition, triggering Condition 9(a) of the Offer”*
 - (b) *“[t]here is no urgency or probative reason why Keybridge would need to convene a s.249F meeting of its Bidder until after the conclusion of the Offer, other than to frustrate the Offer” and*
 - (c) *the acquisition of control over Keybridge is not taking place in an efficient, competitive and informed market, contrary to section 602.*
17. On or about 26 May 2025, Keybridge issued to Yowie a notice of general meeting dated 26 May 2025 convening the Section 249F Meeting for 27 June 2025 to consider resolutions including to remove Messrs Bolton, Patton, Ranger, Schwarze and Agocs as directors of Yowie and to appoint Messrs Wilson, McCathie, Hamilton, Ravell and

³ The numbering of the conditions is as per Yowie’s announcement on ASX on 9 May 2025

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Catalano as directors of Yowie. The notice of meeting stated that Keybridge *“has significant concerns in relation to the actions of the Removal Directors as regards total failures of corporate governance for the Company and their directors’ duties.”*

18. On 2 June 2025, Yowie made an ASX announcement advising that Keybridge had *“purported to send”* a notice under section 249F to Yowie shareholders and that, to the extent the purported meeting was valid, the Yowie board has resolved to postpone it to 14 July 2025 and change the venue.
19. On 4 June 2025, Keybridge commenced proceedings against Yowie in the Supreme Court of New South Wales (Proceedings No. 2025/00213618) (**Court Proceedings**) seeking declarations and orders regarding the Section 249F Meeting, including a declaration that the purported postponement of the meeting by Yowie on 2 June 2025 was invalid.
20. On 13 June 2025, Yowie released on ASX a copy of its bidder’s statement in relation to the Proposed Bid.
21. Also on 13 June 2025, the initial Panel decided not to make a declaration of unacceptable circumstances. The initial Panel considered that:
 - (a) Yowie was aware of the likelihood that Keybridge may seek to change the composition of the Yowie board when Yowie announced its Proposed Bid, and accordingly the condition was likely to be triggered by Keybridge and
 - (b) Keybridge’s actions did not give rise to unacceptable circumstances.⁴

APPLICATION

22. On 17 June 2025, Yowie requested the President’s consent to apply for a review of the decision by the initial Panel pursuant to section 657EA.⁵ Yowie submitted (among other things) that:
 - (a) the initial Panel had fallen into potential error, including on the following bases:
 - (i) it *“erred in placing probative weight on s203D notices that were not issued by Keybridge, but rather by WAM appointed directors of Keybridge”* and *“appears to have concluded that these notices were effective notices of Keybridge’s intention to convene a general meeting of Yowie shareholders for the purposes of replacing Yowie’s directors and therefore that Yowie was aware of this before it launched its takeover bid for Keybridge.”*
 - (ii) to the extent that it formed the view in reaching its conclusion that the Proposed Bid was illusory, not genuine or otherwise designed for a purpose that was inconsistent with the principles in section 602 and
 - (iii) by failing to properly investigate and take into account Yowie’s contention that the WAM appointed directors of Keybridge improperly participated in decision making of Keybridge in response to the Proposed Bid

⁴ See Panel media release [TP25/043](#)

⁵ Via a document which also constituted its review application

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- (b) new evidence was now available including:
 - (i) Yowie's bidder's statement, which provides important information and detail in relation to the Proposed Bid including the final structure of the bid and the conditions of the bid as well as the potential benefits to Keybridge shareholders of accepting the Proposed Bid and
 - (ii) Yowie's submissions of 15 June 2025 in the Court Proceedings, which among other things contain important information concerning what Yowie submits are Keybridge's improper motivations for seeking to replace the board of Yowie, that being, to avoid Keybridge's present obligation to repay a \$4.6m loan
- (c) were the new evidence available to the initial Panel, that Panel may have reached a different decision, or at least would have made further enquiries of the parties that may have resulted in it reaching a different decision and
- (d) there are "*genuine and serious legal and factual matters raised which are contested*" and if these matters are not considered by a review Panel there is a real risk that the purposes of Chapter 6 may be undermined to the detriment and prejudice of both Yowie and Keybridge shareholders.

Interim orders sought

23. Yowie did not seek interim orders.

Final orders sought

24. Yowie sought final orders that the general meeting of Yowie shareholders convened by Keybridge (and subsequently postponed by Yowie) be further postponed.

PRESIDENT'S CONSENT

25. The President's approach to consenting to a review is guided by the following considerations:
- (a) that it is a policy underpinning section 657EA(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.⁶
26. The President considered that the issue concerning the submitted ineffectiveness of the section 203D notices was unusual. In addition, without reaching a conclusion on whether there was any potential error in the sitting Panel's decision, he noted that Yowie had pointed to new evidence which he considered could potentially have a

⁶ Guidance Note 2: Reviewing Decisions at [29]

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bearing on the decision. He decided it was appropriate to provide consent to the review.

DISCUSSION

27. We have considered all the material, including the material before the initial Panel, but address specifically only those materials we consider necessary to explain our reasoning.
28. We received a preliminary submission from Keybridge submitting that we should decline to conduct proceedings. The preliminary submission noted that on 20 June 2025, Black J had delivered judgment in the Court Proceedings and made declarations including that Keybridge's section 203D notices and director nomination notice were valid.⁷ Keybridge submitted that information submitted to the Panel in the review application "*directly contradicts*" both the evidence Yowie provided in Court, and the Court's findings in relation to that evidence. We refer to more specific submissions by Keybridge below.
29. At the time of our decision we did not have the benefit of the initial Panel's reasons for decision, which at the time were still being prepared. However, we note that the role of a review Panel is to conduct a de novo review⁸, so while it is always helpful to receive the initial Panel's reasons, it is not essential.

Frustrating action

30. The Panel's guidance on frustrating actions states that a frustrating action is unlikely to give rise to unacceptable circumstances where the frustrating action is announced before the bid or potential bid.⁹
31. As set out above, Keybridge gave Yowie section 203D notices for the removal of Yowie directors and a notice of intention to nominate new directors to Yowie prior to Yowie announcing its Proposed Bid on 9 May 2025. Yowie submitted that these notices were not legally effective. In particular, Yowie submitted in its review application that:
 - (a) the initial Panel failed to take into account established corporate governance principles that would require decisions of Keybridge to be made by the Keybridge board, not just by "*select non-executive directors of Keybridge without the approval of the Keybridge board*" and
 - (b) the initial Panel may have erred in failing to recognise the significance of the fact that Yowie was entitled to disregard the section 203D notices received from Keybridge as ineffective under section 128(4), and that at its highest, this demonstrated that certain WAM appointed directors of Keybridge "*wished for Keybridge to issue s203D notices*", which of itself was insufficient to form a

⁷ A copy of the judgment can be accessed [here](#)

⁸ *Benjamin Hornigold Limited* 08R, 10R & 11R [2019] ATP 22 at [11] and *Eastern Field Developments Limited v Takeovers Panel* [2019] FCA 311 at [187]

⁹ See Guidance Note 12 at [21(a)]. See also *Molopo Energy Limited* 09 [2017] ATP 22 at [26]

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conclusive basis for Yowie to become aware of Keybridge's wishes or intentions concerning convening a general meeting of its shareholders.

32. In its preliminary submission, Keybridge submitted that the initial Panel had not fallen into error in relation to Yowie's awareness of Keybridge's intention to convene a general meeting of Yowie shareholders, pointing to (among other things):
- (a) the Court's transcript from the hearing on 18 June 2025 in the Court Proceedings where Mr Ranger stated "*since 24 April*" in response to a question regarding how long he had known that Keybridge proposed to call a section 249F meeting and
 - (b) paragraphs 6, 7, 12 and 20 of Black J's judgment in the Court Proceedings including his Honour's finding (at [20]) that Yowie's denial in its response to the ASX Query Letter "*that it or its directors had been made aware that a person or persons holding more than 50% of its ordinary shares intended to call, or requested the directors to call, a general meeting to appoint or remove directors of [Yowie]...was plainly false or at best highly misleading*".
33. Keybridge also submitted that the Proposed Bid had a "*collateral improper purpose*", namely to "*dilute Keybridge prior to [the] Yowie 249F Meeting and entrench [the] Yowie board*", with reference to paragraphs 27, 77 and 78 of Black J's judgment in the Court Proceedings including his Honour's finding that "*[Yowie]'s directors plainly knew that [Yowie]'s takeover bid for [Keybridge] was structured to seek to dilute [Keybridge]'s shareholding in [Yowie], if [Keybridge] shareholders accepted that bid*".
34. We note Black J's declaration (made shortly after the review application was lodged) that Keybridge's notices were valid. At the time of our decision, we had been informed that Yowie had filed an application for appeal of Black J's decision in the Court Proceedings. Leaving this to one side, notwithstanding Yowie's submissions that it was not legally aware that Keybridge may seek to change the composition of the Yowie board when Yowie announced the Proposed Bid, we agree with the initial Panel that Yowie was aware in a commercial sense. This is supported by the extracts of Black J's judgment in the Court Proceedings and the transcript to which we were referred by Keybridge in its preliminary submissions, although we reach our view independently of those materials.
35. Guidance Note 12 states that factors the Panel will have regard to in considering whether a frustrating action gives rise to unacceptable circumstances include "*...any clearly stated objectives of the bidder and whether the triggered condition is commercially critical to the bid.*"¹⁰ It also provides that a frustrating action is unlikely to give rise to unacceptable circumstances if the bid or potential bid does not give shareholders a "*genuine opportunity to dispose of their shares*", for example, because, due to a condition or structural or other feature, it cannot be implemented or completed.¹¹

¹⁰ See Guidance Note 12 at [12(b)]. See also *Pinnacle VRB Ltd* 05 [2001] ATP 14 at [31]

¹¹ See Guidance Note 12 at [20(a)]

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36. Submissions were sought on these aspects of the guidance in the proceedings before the initial Panel. Yowie submitted to the initial Panel as follows (among other things):
- (a) The Proposed Bid is a *“genuine bid that provides Keybridge shareholders with a viable alternative to the current situation whereby Keybridge is only solvent by virtue of the temporary funding provided by WAM (which has a maturity date of 31 August 2025)”*.
 - (b) Yowie’s purpose for bidding is for a *“genuine commercial imperative including reaching a sensible resolution to its outstanding debt in default which benefits both it and Keybridge. Yowie is also seeking control of certain strategic assets of Keybridge that will be beneficial to Yowie’s operating business.”*
 - (c) Given that Keybridge owns a material stake in Yowie, Condition 9 is important to prevent the current Keybridge board taking steps to replace the existing Yowie board with its own nominees which would allow it to effectively kill the Proposed Bid.
 - (d) Condition 9 also critically ensures that section 259C is not enlivened by the operation of section 259E.
 - (e) *“There is no collateral purpose... The Panel recognises a need to structure a bid with conditions to comply with s. 259C in Alinta Limited 01 [2006] ATP 15.”*
 - (f) As the Proposed Bid is a scrip bid, accepting Keybridge shareholders will see their voting interest in Yowie increase rather than reduce. It is accordingly counterintuitive for the Proposed Bid to be used to defeat or delay a change of board, when, by its very structure it enables Keybridge shareholders to increase the control they have over Yowie.
 - (g) *“[A]ny delay in the eventual composition of the Yowie board is a product of the requirements of the Corporations Act, rather than Yowie.”*
37. Keybridge submitted to the initial Panel as follows (among other things):
- (a) *“That the Purported Bid was not intended to proceed is evidenced by factors including that Yowie has provided no rationale for the bid, the sheer number of conditions imposed as well as those specific to preventing shareholder meetings.”*
 - (b) *“[T]he Purported Bid includes a number of conditions incapable of satisfaction and the bid is not ‘genuinely available’ to shareholders. Collectively, these conditions render the Purported Bid illusory at best.”*
 - (c) *“The bid has been designed to engage the Panel’s policy on frustrating action, with the current application from Yowie representing an abuse of process. Yowie is using the fig leaf of the Purported Bid and its corresponding Panel application as part of the many excuses for Yowie to frustrate and delay the Yowie 249F Meeting...”*
 - (d) *“Yowie has offered no explanation (sensible or otherwise) at all as to why a financial services investment company and a chocolate manufacturer would ever want to combine, or why such a transaction would make sense to the shareholders of either entity, let alone why a board change is commercially critical.”*

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38. We note that, as set out on page 54 of the bidder's statement, the 50.1% minimum acceptance condition referred to in the 9 May 2025 announcement was replaced with a 35% minimum acceptance condition and the condition in relation to an ASIC exemption under section 259C(2) was replaced with a condition that Keybridge "no longer controls Yowie" (within the meaning of section 259E). The bidder's statement also stated benefits of the Proposed Bid for Keybridge shareholders, which were summarised on page 14 as follows:
- (a) *"allows Keybridge shareholders to become part of Yowie as a revitalised company with a demonstrated turnaround, a clear growth strategy, and the potential for its shares to be re-instated to trading on the ASX following realisation of the Keybridge debt" and*
 - (b) *"aligns stakeholder interests for potential long-term value creation, which is considered unlikely if Keybridge continues in its current indebted and uncertain state".*
39. We had serious doubts about the prospects of the Proposed Bid being successful having regard to the bid conditions. In particular, we had concerns in relation to Condition 9 as updated in the bidder's statement¹² and we were not persuaded that it was commercially critical to the bid.¹³
40. We consider that our concerns regarding the structure of the Proposed Bid are supported by the extracts of Black J's judgment in the Court Proceedings referenced by Keybridge, although we note that those paragraphs focused on Yowie's improper purpose in postponing the Section 249F Meeting and did not expressly state that the Proposed Bid itself had a "collateral improper purpose". [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED].¹⁴
41. Yowie supplied with its review application a copy of its defendant's submissions dated 15 June 2025 lodged on behalf of Yowie in the Court Proceedings where (among other things) it was asserted that Keybridge's true motivation in seeking to change Yowie's board composition was the improper purpose to "avoid repaying \$4.6 million owed to Yowie".
42. In its preliminary submissions, Keybridge submitted that its intention in calling the Section 249F Meeting was to replace the Yowie board. It referred to paragraphs 53 to 55 of Black J's judgment in the Court Proceedings including "...[t]he evidence to which [Yowie] refers does not allow the inference that [Keybridge] has any such [improper] purpose

¹² Which was expressed as follows on page 56: "Prior to the end of the Offer Period Yowie shareholders do not pass a resolution in general meeting (including any resolution set out in the general meeting of Yowie Shareholders purportedly called by Keybridge under section 249F of the Corporations Act in its notice of meeting dated 26 May 2025) the effect of which is to change the composition of the board of directors of Yowie"

¹³ See Guidance Note 12 at [12(b)]

¹⁴ [REDACTED]

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to be drawn, where it is at least equally if not more likely in the relevant circumstances that [Keybridge]'s true motivation is, as it says, is to replace directors of [Yowie] in which it lacks confidence". Given there was insufficient evidence in the Court Proceedings for an inference to be drawn that Keybridge was seeking to change Yowie's board composition to avoid repaying money owed to Yowie (noting the court's evidence gathering powers), we considered that there was little (if any) prospect we would reach a different view on this point. Even if we were able to draw such an inference, we did not consider that this would necessarily be unacceptable in the circumstances of this matter. Accordingly, we did not consider that making further inquiries into Keybridge's intentions in calling the Section 249F Meeting was warranted.

43. Yowie also provided with the review application a copy of an email from Keybridge's lawyers to Yowie's lawyers of 15 June 2025 noting that Keybridge intended to contend in the Court Proceedings that Yowie's postponement of the Section 249F Meeting was for the reason that *"Yowie hoped to dilute Keybridge's voting power prior to any such meeting taking place, including via the dilution contemplated by the bidder's statement"*. Yowie submitted that this constituted an acknowledgement by Keybridge of the validity of the Proposed Bid and *"implies Keybridge's purpose of frustrating the continuance of the bid"*. Even if this email did constitute such an acknowledgement by Keybridge, we do not accept that Keybridge's actions amounted to unacceptable frustrating action.
44. In light of the above, while the actions of Keybridge in calling the Section 249F Meeting may have technically amounted to a frustrating action, we do not consider there is any likelihood we could find that this was an unacceptable frustrating action.

Insider participation

45. In the review application, Yowie submitted that consistent with Guidance Note 19: *Insider Participation in Control Transactions*, the WAM appointed directors of Keybridge should not have any involvement in considering or responding to the Proposed Bid. It further submitted that those directors should not have had any involvement in approving the issue of the section 249F notice which triggered a defeating condition of the Proposed Bid and that this was *"plainly unacceptable"*.
46. In submissions to the initial Panel, Yowie submitted (among other things) that *"[i]f Yowie is successful in its bid, the WAM directors will be displaced and inevitably their loan (which was entered into after the bid intention was announced) will likely go into default"* and that this presented WAM with an inevitable conflict.
47. Keybridge submitted to the initial Panel that the Proposed Bid was not a genuine bid¹⁵ and *"[i]n the event the Purported Bid (or any other bid) were genuinely to be made, for such time as WAM was providing funding to Keybridge including conditions on board composition it would be appropriate for Keybridge to establish an independent board committee to respond to any genuine takeover bid"*.

¹⁵ See paragraph 37

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48. Keybridge further submitted to the initial Panel (in rebuttals):
- (a) The letter of comfort dated 12 February 2025 was offered by WAM Active as an interim measure of providing comfort to Keybridge’s newly appointed directors to resolve any concerns as to Keybridge’s solvency if the administration at the time were to be ended.
 - (b) The long form documents for Keybridge’s bridge funding facility from WAM Active Limited and other entities within the Wilson Asset Management Group, were negotiated by Mr Ravell and Mr Catalano on behalf of Keybridge.
 - (c) Mr Catalano and Mr Ravell are independent of the Wilson Asset Management Group. Mr Ravell had been nominated by WAM Active as a Keybridge director candidate and at the time had disclosed, for the avoidance of doubt, any technical association that might have arisen from him consenting to that nomination.
49. Given what Keybridge acknowledges in paragraph 47, it is appropriate in all the circumstances here to leave to Keybridge, at least at first instance, the decision on how to manage insider participation in accordance with our Guidance Note. Accordingly, we decided not to take this aspect any further.

Conclusion

50. We consider there was no likelihood of unacceptable frustrating action here. [REDACTED]

[REDACTED]
[REDACTED]¹⁶ [REDACTED]
[REDACTED]
[REDACTED]¹⁷ [REDACTED].

DECISION

51. 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

52. 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.

¹⁶ [REDACTED]

¹⁷ [REDACTED]

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Post-script

53. On 30 July 2025, the Court of Appeal of the Supreme Court of New South Wales dismissed the appeal of Black J’s decision in the Court Proceedings.¹⁸

James Burchnall

President of the sitting Panel

Decision dated 26 June 2025

Reasons given to parties 28 August 2025

Reasons published 11 September 2025

¹⁸ See [*Yowie Group Ltd and Bolton v Keybridge Capital Ltd \(No 3\)* \[2025\] NSWCA 168](#)

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Advisers

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