



## Australian Government

### Takeovers Panel

## Reasons for Decision Yowie Group Ltd 04 & 05 [2025] ATP 22

### Catchwords:

*Decline to make a declaration – board control – association – placement – frustrating action*

*Corporations Act 2001 (Cth), sections 203D(2), 225, 249D, 249F, 249G, 601FM, 602, 606, 608(1), 608(2), 608(3)(a), 608(3)(b), 611 (item 9), 657A 671B, 707(3)*

*Australian Securities and Investments Commission Regulations, regulation 16(1)(j)*

*ASX Listing Rules 7.6, 10.11*

*Guidance Note 12: Frustrating Action*

*Yowie Group Ltd and Bolton v Keybridge Capital Ltd (No 3) [2025] NSWCA 168, In the matter of Yowie Group Ltd [2025] NSWSC 648*

*Yowie Group Ltd 07 [2025] ATP 27, Keybridge Capital Limited 21R [2025] ATP 24, Yowie Group Ltd 06 & Keybridge Capital Limited 19 [2025] ATP 23, Keybridge Capital Limited 20 [2025] ATP 20, Keybridge Capital Limited 18R [2025] ATP 17, Keybridge Capital Limited 17 [2025] ATP 15, Factor Therapeutics Limited [2019] ATP 5, Hastings Rare Metals Limited [2013] ATP 13, Mount Gibson Iron Limited [2008] ATP 4*

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

## INTRODUCTION

1. The Panel, Teresa Dyson (sitting President), Christopher Stavrianou and James Stewart<sup>1</sup>, declined to make a declaration of unacceptable circumstances on two applications by Keybridge Capital Limited in relation to the affairs of Yowie Group Ltd. The applications, heard together, concerned two purported control effects on Yowie. The first stemmed from a placement undertaken by Yowie and the second was a downstream control effect from an issue of units in HHY. The Panel was not satisfied that the circumstances had or were likely to have an effect on the control, or potential control of Yowie by a person with a substantial interest in Yowie or were otherwise inconsistent with the purposes of s602.<sup>2</sup> Therefore, the Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.
2. In these reasons, the following definitions apply.

**Aurora**

Aurora Funds Management Limited

<sup>1</sup> There was no objection to the same sitting Panel as in *Keybridge Capital Limited 17 [2025] ATP 15* and *Yowie Group Ltd 06 and Keybridge Capital Limited 19 [2025] ATP 23* (to be published)

<sup>2</sup> 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)

## Takeovers Panel

### Reasons – Yowie Group Ltd 04 & 05 [2025] ATP 22

<b>Constitutional Amendment</b>	has the meaning given in paragraph 17(a)
<b>HHY</b>	HHY Fund
<b>HHY Placement</b>	has the meaning given in paragraph 19
<b>Keybridge</b>	Keybridge Capital Limited
<b>Keybridge s249F Proceedings</b>	has the meaning given in paragraph 32
<b>Placees</b>	has the meaning given in paragraph 15
<b>Placement Shares</b>	the ordinary shares in Yowie issued under the Yowie Placement
<b>WAM Active</b>	WAM Active Limited
<b>WAM Capital</b>	WAM Capital Limited
<b>WAM Group</b>	WAM Active, WAM Capital, WAM Strategic Value Limited and Botanical Nominees Pty Ltd
<b>Yowie</b>	Yowie Group Ltd
<b>Yowie Placement</b>	has the meaning given in paragraph 11
<b>Yowie Takeover Bid</b>	has the meaning given in paragraph 10
<b>Yowie s249F meeting</b>	has the meaning given in paragraph 17(b)

## FACTS

3. Keybridge is an ASX-listed investment and financial services firm with a portfolio of listed and unlisted investments (ASX: KBC).
4. Yowie is an ASX-listed company that manufactures chocolate (ASX: YOW).
5. WAM Active is an ASX-listed investment company managed by WAM Group (ASX: WAA).
6. The historical events between WAM Group, Keybridge and Yowie leading up to the Yowie Placement are set out in detail in the reasons for decision in *Keybridge Capital Limited* 17<sup>3</sup> and *Keybridge Capital Limited* 20<sup>4</sup>.
7. Clause 13.3 of Yowie’s constitution (adopted in 2012) states, among other things, that:  
*“The Company shall observe the requirements of Section 225 of the Corporations Act with respect to the election of Directors”.*
8. It is unclear why section 225 is referenced in clause 13.3 of Yowie’s constitution relating to the election of directors. The section prohibits voting by related parties

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<sup>3</sup> [2025] ATP 15

<sup>4</sup> [2025] ATP 20

## Takeovers Panel

### Reasons – Yowie Group Ltd 04 & 05 [2025] ATP 22

and their associates for the purposes of shareholder approvals under the related party provisions. It does not apply to company meetings generally.

9. On 29 April 2024, Keybridge lodged a substantial holding notice disclosing:
  - (a) it held a relevant interest in 178,689,829 Yowie shares (with a voting power of 78.34%)
  - (b) it was either the “registered and beneficial owner” or “holder” of 153,163,186 Yowie shares (with a voting power of 66.78%) and
  - (c) the difference between (a) and (b) (being a voting power of 11.56%) was due to Keybridge’s deemed relevant interest in Yowie shares held by Aurora as a responsible entity for HHY, an unlisted managed investment scheme, arising by reason of Keybridge having more than 20% of the voting power in HHY.
10. On 9 May 2025, Yowie announced a one for one conditional scrip takeover bid for Keybridge (**Yowie Takeover Bid**). The Yowie Takeover Bid has been the subject of a number of applications to the Panel.<sup>5</sup>
11. On 12 May 2025, at a Yowie directors meeting that commenced at 10.30am (AEST), Yowie agreed to issue 34,406,185 shares (15% of Yowie’s issued capital) under a placement (**Yowie Placement**).
12. On 12 May 2025 at 2pm (AEST), Keybridge applied to the New South Wales Supreme Court seeking an order for a copy of Yowie’s register in order to call a s249F meeting. At 3.06pm (AEST), a copy of the affidavit in support of that application was served by email to Yowie.
13. On 12 May 2025 at 5.30pm (AEST), Yowie disclosed (among other things) in an ASX announcement that it had:

*“received applications for, and has resolved to issue, 34,405,185 new shares in Yowie at 1.5c per share (a 7% premium to the last traded price of Yowie securities) under a private placement to wholesale investors raising A\$516k”.*
14. On 13 May 2025, WAM Capital applied for a copy of HHY’s unit holder register for the purpose of calling a meeting under s601FM to replace Aurora as the responsible entity of HHY.
15. On or before 15 May 2025, the Yowie Placement was made to:
  - (a) Milani Family Investments Pty Ltd ATF Milani Family Trust (Mr Jarrod Milani) – 666,666 shares
  - (b) Ms Franca Capelli – 30,807,786 shares and
  - (c) Peter Davies Pty Ltd (Mr Peter Davies) – 2,930,733 shares(together, the **Placees**).

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<sup>5</sup> Keybridge Capital Limited 17 [2025] ATP 15, Keybridge Capital Limited 18R [2025] ATP 17, Keybridge Capital Limited 20 [2025] ATP 20, Yowie Group Ltd 06 & Keybridge Capital Limited 19 [2025] ATP 23 (to be published), Keybridge Capital Limited 21R [2025] ATP 24 (to be published) and Yowie Group Ltd 07 [2025] ATP 27 (to be published)

## Takeovers Panel

### Reasons – Yowie Group Ltd 04 & 05 [2025] ATP 22

16. As a result of the Yowie Placement, Keybridge's registered or beneficial interest in Yowie (excluding its relevant interest through its interest in HHY) was reduced from 66.78% to 58.07%.
17. On 28 May 2025, Keybridge despatched to Yowie members a notice of meeting under s249F scheduled to be held on Friday, 27 June 2025 seeking the following resolutions:
  - (a) As a special resolution – *That the Company's Constitution is amended with immediate effect by deleting the words "The Company shall observe the requirements of Section 225 of the Corporations Act" from clause 13.3 (Constitutional Amendment) and*
  - (b) Ordinary resolutions to in effect remove Messrs John Patton, Nicholas Bolton, Andrew Ranger, Diesel Schwarze and Daniel Agocs as directors of Yowie and appoint Messrs Geoffrey Wilson, Jesse Hamilton, Martyn McCathie, Frank Antony Catalano and Sulieman Ravell as directors of Yowie (**Yowie s249F meeting**).
18. Prior to 30 May 2025:
  - (a) Keybridge held 31.15% of the units in HHY and
  - (b) WAM Group held 31.98% of the units in HHY.
19. On 30 May 2025, Aurora approved the issue of units equivalent to 42% of all HHY units on issue to:
  - (a) Mr Ranger (6,849,315 units)
  - (b) Mr Roger Hearnden (8,904,110 units) and
  - (c) Australian Style Holdings Pty Ltd (18,493,151 units) (**HHY Placement**).
20. As a result of the HHY Placement:
  - (a) Keybridge's holding in HHY reduced to 21.89% and
  - (b) WAM Group's holding in HHY reduced to 22.48%.

## APPLICATION

### Yowie Group Ltd 04

21. By application dated 13 May 2025, Keybridge sought a declaration of unacceptable circumstances. Keybridge submitted (among other things) that:
  - (a) Yowie (and by extension, Keybridge and WAM by virtue of s608(3)) obtained a relevant interest in the Placement Shares, as the Placement Shares were "*restricted securities*"<sup>6</sup>
  - (b) Keybridge and WAM contravened s606 as a result of the Yowie Placement, as they had a relevant interest in the Placement Shares and

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<sup>6</sup> Given that Yowie's securities were suspended for more than 5 days in the last 12 months, Keybridge submitted that s707(3) contemplates that any capital raising by Yowie without a prospectus requires restriction arrangements, making the placement shares "*restricted securities*".

## Takeovers Panel

### Reasons – Yowie Group Ltd 04 & 05 [2025] ATP 22

- (c) the issue of the Placement Shares breached ASX Listing Rule 7.6 as Yowie had been on notice since at least 1 April 2025 and on numerous occasions since, that Keybridge intended to call a meeting to appoint and remove the directors of Yowie.

#### Interim orders sought

22. Keybridge sought the following interim orders that:
- (a) no further steps be taken by Yowie to issue the Placement Shares and
  - (b) recipients of the Placement Shares not dispose of those shares.

#### Final orders sought

23. Keybridge sought final orders:
- (a) preventing Placees (and any person acting on their behalf) from exercising voting rights in any Yowie shares acquired under the Yowie Placement at any members meeting called by Keybridge under s249F within the next 12 months and
  - (b) that either the issue of the Placement Shares be cancelled or vested in the Commonwealth on trust for the current holder for sale by ASIC with the condition that Messrs Bolton, Patton, Ranger, Schwarze, Agocs and their respective associates not purchase any of those shares.

#### Yowie Group Ltd 05

24. By application dated 3 June 2025, Keybridge sought a declaration of unacceptable circumstances. Keybridge submitted (among other things) that some or all of Yowie's former directors, the subject of removal resolutions at the Yowie s249F meeting, sought to influence the composition of Yowie's board in the period prior to the Yowie s249F meeting by:
- (a) causing HHY to undertake the HHY Placement for the improper purpose of diluting unitholders ahead of a s601FM meeting to change its responsible entity
  - (b) participating in the HHY Placement (either directly or indirectly)
  - (c) failing to disclose the identity of HHY unitholders who (with their associates) held greater than 20% of HHY's total issued units
  - (d) preventing Keybridge from passing any resolution to replace Aurora as HHY's responsible entity in a s601FM meeting and, as a result, precluding HHY from voting in favour of the Constitutional Amendment at the Yowie s249F meeting.

#### Interim orders sought

25. Keybridge sought the following interim orders that:
- (a) Messrs Bolton and Ranger and their associates be prevented from acquiring any additional interests in HHY until further order of the Panel
  - (b) Messrs Bolton and Ranger and their associates lodge substantial holding notices with ASX under s671B of the Act disclosing their combined voting power, relevant interests, and associations in Yowie

## Takeovers Panel

### Reasons – Yowie Group Ltd 04 & 05 [2025] ATP 22

- (c) Messrs Bolton and Ranger and their associates update their Appendix 3Y disclosures as Yowie directors and
- (d) Aurora disclose the dates and details of any HHY units issued since 31 December 2023, including the number of units issued on each date, participants in those issues, and third-party confirmation of the date(s) funds were received in HHY's bank account as consideration of those new units.

#### Final orders sought

26. Keybridge sought final orders that:

- (a) HHY unitholders who received units on or from 1 April 2025 be restrained from voting at any meeting called within 12 months under s601FM of the Act to replace Aurora as responsible entity of HHY and
- (b) Aurora in its capacity as responsible entity of HHY be restrained from voting its interests in Yowie shares against the Constitutional Amendment at the Yowie s249F meeting.

#### DISCUSSION

- 27. While the allegation of a breach of s606 was retracted by Keybridge (see paragraphs 44 - 49), the other issues raised in *Yowie Group Ltd 04*, including the circumstances surrounding the Yowie Placement, warranted further consideration and we decided to conduct proceedings.
- 28. Keybridge made the *Yowie Group Ltd 05* application on 3 June 2025, three weeks after the *Yowie Group Ltd 04* application was made on 13 May 2025. Given the overlap in the subject matter and the Panel's aim of resolving disputes consistently and in a timely manner, we made a direction on 13 June 2025 that the applications be heard together.<sup>7</sup>
- 29. We have considered all the material presented to us in coming to our decision, but only specifically address those matters that we consider necessary to explain our reasoning.

#### Deferral of proceedings

- 30. Before we consider each of Keybridge's submissions in turn, we summarise the timeline of the proceedings.
- 31. On 2 June 2025, Yowie disclosed (among other things) in an ASX announcement that its board unanimously resolved to postpone the Yowie s249F meeting by a fortnight and change the location of the meeting.
- 32. On 4 June 2025, Keybridge commenced proceedings in the Supreme Court of New South Wales, seeking a number of declarations in relation to the validity of the Yowie s249F meeting (**Keybridge s249F Proceedings**).
- 33. On 20 June 2025, Justice Black handed down his judgment in the Keybridge s249F Proceedings, declaring (among other things) that "*the notice of general meeting dated 26*

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<sup>7</sup> Under regulation 16 of the *Australian Securities and Investments Commission Regulations 2001* (Cth)

## Takeovers Panel

### Reasons – Yowie Group Ltd 04 & 05 [2025] ATP 22

*May 2025 issued by [Keybridge] and despatched to shareholders of [Yowie] under s 249F of the Act (Notice of 249F Meeting) is a valid notice convening a general meeting of shareholders of [Yowie] to be held on Friday 27 June 2025".<sup>8</sup> In coming to his decision, Justice Black provided an interpretation of clause 13.3 of Yowie's constitution which, unless overturned by a higher Court, rendered the Constitutional Amendment unnecessary.<sup>9</sup>*

34. On 23 June 2025, Keybridge suggested that the Panel defer proceedings for a week, stating that Justice Black's decision "*included declarations as to Yowie's constitution provisions and shareholder voting entitlements for the Yowie 249F meeting on Friday 27 June 2025*". We considered that Justice Black's decision commercially addressed several issues raised in the proceedings and accordingly sought submissions from the parties on whether to make the direction. On 24 June 2025, after receiving no submissions from the parties, we directed that the proceedings be deferred until 1 July 2025.<sup>10</sup>
35. On Friday, 27 June 2025, the Yowie s249F meeting proceeded and resolutions to replace the former Yowie directors with Messrs Wilson, Hamilton, McCathie, Catalano and Ravell were passed. The Constitutional Amendment resolution was not carried with 72.33% of Yowie shareholders voting for and 27.67% voting against the resolution.
36. On Monday, 30 June 2025, we invited parties to provide submissions on how the results of the Yowie s249F meeting would impact the continuation or conduct of the proceedings.
37. On 1 July 2025, Keybridge submitted that:
  - (a) the proceedings should continue and was of the view that both the Yowie Placement and HHY Placement represented unacceptable circumstances
  - (b) "*Yowie's new directors are now in a position to review the circumstances surrounding the Yowie Placement*" and
  - (c) "*the Panel consider deferring conduct of this proceeding for one further week to allow this review to occur and for Yowie to consider making its own submissions to the Panel in relation to the Yowie Placement*".
38. We granted the request and directed that the proceedings be deferred until 9 July 2025<sup>11</sup> given Keybridge's suggestion that further investigation, by both Keybridge and Yowie, may yield relevant material.
39. We sought further submissions from parties, on 10 July 2025 by email and on 17 July 2025 by supplementary brief.

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<sup>8</sup> *In the matter of Yowie Group Ltd* [2025] NSWSC 648 at [82]. Postscript - on 30 July 2025, the Full Court of the Supreme Court of New South Wales dismissed an appeal of Justice Black's decision, see *Yowie Group Ltd and Bolton v Keybridge Capital Ltd (No 3)* [2025] NSWCA 168

<sup>9</sup> *Ibid* at [41] to [52]

<sup>10</sup> Pursuant to regulation 16(1)(j) of the Australian Securities and Investments Commission Regulations.

<sup>11</sup> Pursuant to regulation 16(1)(j) of the Australian Securities and Investments Commission Regulations.

## Takeovers Panel

### Reasons – Yowie Group Ltd 04 & 05 [2025] ATP 22

40. On 17 July 2025, the new board of Yowie<sup>12</sup> submitted a replacement notice to become a party. Yowie submitted that it was conducting an internal review into the use of funds from the Yowie Placement and noted that *“based on current bank records and the information available to it, approximately \$414,000 or 87% of the placement funds were paid to the former Yowie directors, including the payment of accrued directors’ fees, and discretionary short-term incentive payments to certain former Yowie directors”*.<sup>13</sup>
41. Keybridge submitted (among other things) that:
- (a) the steps discussed in the chronology in Justice Black’s decision, together with the Yowie Takeover Bid, in effect evidenced a strategy by the former Yowie directors *“to do all things possible to dilute Keybridge ahead of the Yowie 249F meeting, entrenching the former directors via blatant misuse of company resources for their own advantage”*
  - (b) *“Yowie’s directors at the time of the Yowie placement on 12 May 2025 and the HHY Dilution of 30 May 2025 should be directed to pay the costs of these applications”* and
  - (c) *“these circumstances are so egregious as to warrant a declaration of unacceptable circumstances, independently of any decision the Panel might make as to awarding costs orders against any party”*.
42. Keybridge did not press for any orders other than a costs order and did not provide any further information into the circumstances surrounding the Yowie Placement.
43. We therefore have considered whether on the material there are grounds to make a declaration of unacceptable circumstances, given that Keybridge continued to seek such a declaration.

#### Contravention of s606

44. Keybridge submitted that there was a contravention of s606 as their own relevant interest in Yowie shares increased from 78.34% to 81.17% as a result of the Yowie Placement (see table below).

	Before Placement		After placement	
Voting Power	Shares	%	Shares	%
Keybridge (direct voting control)	153,163,186	66.78%	153,163,186	58.07%
HHY (direct voting control – not under Keybridge control)	26,526,643	11.57%	26,526,643	10.06%

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<sup>12</sup> Through its legal representative, Gilbert + Tobin

<sup>13</sup> Yowie also referred to instances where the former board of Yowie sought legal advice on matters that in its view gave *“weight to the argument that the Former Yowie Directors were on a “frolic of their own”: if so, it is they and not Yowie that should bear responsibility for the resulting wasteful costs”*. We considered that this material did not take us far in relation to the consideration of the matters raised in the applications.



## Takeovers Panel

### Reasons – Yowie Group Ltd 04 & 05 [2025] ATP 22

Placement shares	N/A	N/A	34,405,185	13.04%
<b>Keybridge relevant interest</b>	<b>179,689,829</b>	<b>78.34%</b>	<b>214,095,014</b>	<b>81.17%</b>

45. The crux of Keybridge’s assertion stemmed from the classification of the Placement Shares as “restricted securities” under s707(3) and, as a result, the restriction arrangements gave Yowie a relevant interest in the Placement Shares by virtue of s608(1) and s608(2).<sup>14</sup>
46. Keybridge, as the registered holder of over 50% of Yowie’s issued capital, controls Yowie and therefore under s608(3)(b), held a relevant interest extending to every interest that Yowie itself held.
47. Keybridge subsequently retracted the allegation that the Yowie Placement caused itself to breach s606 in relation to its own relevant interest in Yowie as any increase in its relevant interest fell within the 3% creep.<sup>15</sup>
48. Based on our initial observations, we considered that there was an open query as to whether the restriction arrangements on the Placement Shares gave rise to a relevant interest on the part of Yowie in relation to its own shares.
49. However, given the retraction of its own submissions, we decided not to examine Keybridge’s potential contravention of s606 any further.

#### Association

50. Yowie identified the 3 Placees who received Placement Shares under the Yowie Placement (see paragraph 15).
51. Mr Milani is an employee of Yowie’s Australian and New Zealand Division and was allocated 1.94% of the Placement Shares issued. He is not a director of Yowie and was not prevented by ASX Listing Rule 10.11 from participating in an issue of Yowie shares.
52. Peter Davies Pty Ltd was allocated 8.52% of the Placement Shares. Yowie did not directly receive cash for the placement to Peter Davies Pty Ltd and the shares issued were funded from a transfer to Yowie of the residual interest in a loan made to Mr Catalano.
53. Mr Davies and Mr Bolton have a business relationship. Mr Davies has worked with and invested together with Mr Bolton at Keybridge over the last decade on a number of deals. One of Mr Davies’ businesses, Roadnight Capital, had lent money to Keybridge at various times from 28 January 2022 to 11 December 2023. The loan was secured and documented. It started at \$500,000 and grew to \$5,000,000 under the terms of the agreement.

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<sup>14</sup> Under s608(1) and s608(2), a person who is the beneficiary of restriction or escrow arrangements with a security holder in relation to securities has a relevant interest in those securities as they have the power to control the disposal of those securities.

<sup>15</sup> Item 9, s611

## Takeovers Panel

### Reasons – Yowie Group Ltd 04 & 05 [2025] ATP 22

54. Furthermore, in February 2014, a related entity of Mr Davies provided a \$700,000 loan to entities associated with Mr Bolton. The loan was amortised over the term and fully repaid in October 2018.
55. Ms Capelli is a resident of Italy and was allocated 89.54% of the Placement Shares. Yowie submitted that it received an approach by phone on behalf of Ms Capelli in February or March 2025 inquiring about Yowie's need for capital whilst Keybridge was in administration. Yowie understood that the phone call was *"linked to press about Keybridge's administration and its impact on Yowie and general interest in the Yowie brand"*.
56. We sought submissions from Ms Capelli directly to explain the circumstances surrounding her investment in Yowie.
57. Ms Capelli submitted that:
  - (a) she first became aware of Yowie in or around mid-February 2025 while doing due diligence on the holdings of Keybridge from its public documents while Keybridge was in administration; and
  - (b) she chose to invest in Yowie *"because of [her] view on the growth prospect of the confectionary with surprise market in Europe and the United States...and was encouraged by the cheap valuation and thought it represented good value given the restructuring occurring around Keybridge and the discount of the placement to the Net Asset Value. The opportunity was flagged by [her] husband"*.
58. Based on the materials provided, we considered that the quantum of Ms Capelli's investment to purchase the Placement Shares (approximately \$460,000) and her apparent limited knowledge of Yowie and its operations warranted closer examination.
59. We observed that there was a notable absence of documentation explaining the basis of her investment. There was no material from the application form, correspondence or other records that clarified how Ms Capelli approached Yowie or how the investment decision was made. The lack of material significantly impeded our ability to understand the circumstances of her participation in the Yowie Placement.
60. In particular, there was no credible explanation as to how contact was established between Ms Capelli and Yowie prior to the Yowie Placement. The absence of such fundamental information raised questions about the transparency of how Ms Capelli came to participate in a substantial proportion of the Yowie Placement.
61. No evidence was produced by Keybridge to support a finding that there was an association, despite our specific request for submissions on this point. We had directed the parties to the proceedings not to contact any Placee, other than to obtain a Placee's contact details.
62. In the circumstances, we did not consider we were able to make any inferences from the absence of material that would lead to a finding of association.
63. After Keybridge suggested a deferral of proceedings so that the new board of Yowie could make enquiries, the only relevant submission we received from Yowie was that

approximately 87% of the placement funds were paid to the former Yowie directors in accordance with pre-existing entitlements of those directors to those payments (see paragraphs 37 to 42). While this raised questions as to the motivations behind the Yowie Placement, it did not in our view support any finding of association.

64. We do not consider it would be in the public interest to prolong proceedings by making further enquiries. We also observe that Keybridge and Yowie could, after investigating the circumstances of the Yowie Placement further, take the matter to court or make a further Panel application.

### Control effect of the Yowie Placement

65. While *Guidance Note 12: Frustrating Action* does not apply to meetings to change a company's board<sup>16</sup> and the court is the appropriate forum for considering whether a placement was made for a proper purpose<sup>17</sup>, the Panel has acknowledged that "*a placement made prior to such a meeting may have an effect on control and impact on voting at the meeting in an unacceptable way*"<sup>18</sup>. Accordingly we considered, applying our commercial judgment, whether the Yowie Placement had an unacceptable effect on control.
66. Prior to the Yowie Placement, Keybridge was in a position to directly exercise the voting over 66.78% of the shares in Yowie (see paragraph 44).<sup>19</sup> Following the placement, this was diluted to 58.08%. While this represented a significant reduction in the number of shares Keybridge could directly vote and its broader voting power, and 66.78% is closer to the 75% threshold to pass special resolutions, we note that this did not cross any critical statutory thresholds under the Corporations Act. This reduction also had less significance following Justice Black's decision in the Keybridge s249F Proceedings (see paragraph 33) and the replacement of Yowie directors as a result of Yowie s249F meeting. Specifically, following Justice Black's decision, the replacement of directors as a result of Yowie s249F meeting only required the passing of an ordinary resolution (and not a special resolution), and Keybridge had over 50% of the voting power in Yowie at all times.
67. Based on the above, we considered that the potential control effect of the Yowie Placement was not unacceptable.

### Breach of ASX Listing Rule 7.6

68. We consider that whether the issue of the Placement Shares was unacceptable because it was in breach of ASX Listing Rule 7.6, as Keybridge submitted, has been overtaken by events (see above). In any event, we are inclined to consider that in the

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<sup>16</sup> *Factor Therapeutics Limited* [2019] ATP 5 at [12]

<sup>17</sup> *Hastings Rare Metals Limited* [2013] ATP 13 at [18]

<sup>18</sup> *Factor Therapeutics Limited* [2019] ATP 5 at [12], *Accelerate Resource Limited 01 & 02* [2020] ATP 7 at [39]

<sup>19</sup> This does not include HHY's shareholding in Yowie. We consider that Keybridge's ability to control HHY's shares in Yowie was dependent on Keybridge seeking to replace HHY's responsible entity. Given the timing of achieving such an outcome, we considered that we did not need to consider HHY's holdings for this analysis (see paragraph 73).

absence of a control effect any breach of ASX Listing Rule 7.6 is primarily a matter for ASX.

### Affairs of HHY

69. We note from the outset that HHY is not subject to Chapter 6 of the Corporations Act. However, we considered the circumstances surrounding the HHY Placement to determine whether it had an unacceptable downstream control effect on Yowie, which is a Chapter 6 company and within our jurisdiction.
70. Keybridge alleged that the issue of units under the HHY Placement was undertaken, at least in part, to dilute significantly Keybridge and WAM Group's holdings in HHY ahead of a HHY s601FM meeting and the Yowie s249F meeting.
71. Prior to the HHY Placement, we note that HHY had not issued new units for some time. Aurora, as the responsible entity of HHY and of which Mr Patton is a director, decided to issue new units under the HHY Placement to certain former directors of Yowie and to a company associated with Mr Bolton. The units issued under the HHY Placement represented approximately 42% of the total units on issue in HHY at the time of issue.
72. We took into account Keybridge's submission that the circumstances of the HHY Placement were unusual given its size and the fact that HHY had not issued new units for a considerable period of time. Furthermore, we observed that the HHY Placement resembled the Yowie Placement considered in *Yowie Group Ltd 04* and its effect was to potentially diminish Keybridge's voting power in Yowie by diluting its interest in Yowie held through HHY.
73. However, in light of Justice Black's decision and the results of the Yowie s249F meeting, the downstream effect of control of HHY's 11.57% interest in Yowie is of less significance. We do not consider that the issue of units in HHY had an unacceptable downstream control effect on Yowie.
74. Keybridge may decide to conduct a deeper examination into the circumstances surrounding the HHY Placement<sup>20</sup> and take Court action if warranted.

### DECISION

75. For the reasons above, we declined to make a declaration of unacceptable circumstances. We consider that it is not against the public interest to decline to make a declaration<sup>21</sup> and we had regard to the matters in s657A(3).

### Orders

76. Given that we made no declaration of unacceptable circumstances, we make no final orders, including as to costs.

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<sup>20</sup> Including whether there has been any contravention of the substantial holding provisions

<sup>21</sup> We considered in the circumstances of these matters, that it was not in the public interest to make a declaration for the purposes of making a costs order

## **Takeovers Panel**

**Reasons – Yowie Group Ltd 04 & 05  
[2025] ATP 22**

**Teresa Dyson**

**President of the sitting Panel**

**Decision dated 29 July 2025**

**Reasons given to parties 18 September 2025**

**Reasons published 23 September 2025**

## Takeovers Panel

Reasons – Yowie Group Ltd 04 & 05  
[2025] ATP 22

### Advisers

Party	Advisers
Keybridge	Mills Oakley (until 1 July 2025) Gadens (from 1 July 2025)
Yowie	Gilbert + Tobin (from 17 July 2025)