



Australian Government

Takeovers Panel

Reasons for Decision Keybridge Capital Limited 21R [2025] ATP 24

Catchwords:

Decline to conduct proceedings – insider participation – frustrating action – association – section 606

Corporations Act 2001 (Cth), sections 249F, 259C, 602, 606

In the matter of Yowie Group Ltd [2025] NSWSC 648, Bolton v WAM Active Limited (No 2) [2025] NSWCA 99, Bolton v WAM Active Limited [2025] NSWCA 81, In the matter of Keybridge Capital Limited (No 2) [2025] NSWSC 354, In the matter of Keybridge Capital Limited [2025] NSWSC 240, Eastern Field Developments Limited v Takeovers Panel [2019] FCA 311, Tinkerbelle Enterprises Pty Limited as Trustee for The Leanne Catelan Trust v Takeovers Panel [2012] FCA 1272, CEMEX Australia Pty Ltd v Takeovers Panel [2009] FCAFC 78, CEMEX Australia Pty Ltd v Takeovers Panel [2008] FCA 1572, Attorney-General (Cth) v Alinta Ltd [2008] HCA 2, Drake v Minister for Immigration and Ethnic Affairs (1979) 24 ALR 577

Guidance Note 2: Reviewing Decisions, Guidance Note 12: Frustrating Action, Guidance Note 19: Insider Participation in Control Transactions

Keybridge Capital Limited 20 [2025] ATP 20, Keybridge Capital Limited 17 [2025] ATP 15, The Agency Group Australia Limited 03R [2021] ATP 5, Yowie Group Limited 01 & 02 [2019] ATP 10, Flinders Resources Limited 03R [2018] ATP 11, Molopo Energy Limited 03R, 04R & 05R [2017] ATP 12, MYOB Limited [2008] ATP 27, Mount Gibson Iron Limited [2008] ATP 4, BreakFree Limited 04R [2003] ATP 42

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

INTRODUCTION

1. The review Panel, Sylvia Falzon, Christian Johnston (sitting President), and Neil Pathak, declined to conduct proceedings on an application by Mr Nicholas Bolton in relation to the affairs of Keybridge. The application submitted (among other things) that some directors of Keybridge were participating insiders in relation to Yowie's all-scrip takeover bid for Keybridge and that an entity connected with the Wilson Asset Management Group had breached section 606¹ as a result of a loan provided to Keybridge. The review Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the review Panel declined to conduct proceedings.

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

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2. In these reasons, the following definitions apply.

Bid	has the meaning given in paragraph 26
Bridge Funding Facility	has the meaning given in paragraph 30
Catalano Super	Catalano Super Investments Pty Ltd as trustee for Catalano Superannuation Fund
Comfort Letter	has the meaning given in paragraph 19
Keybridge	Keybridge Capital Limited
Minimum Acceptance Condition	has the meaning given in paragraph 32(a)
No Board Change Condition	has the meaning given in paragraph 31
No Control Condition	has the meaning given in paragraph 32(b)
Previous Keybridge Directors	has the meaning given in paragraph 11
Term Sheet	has the meaning given in paragraph 20
WAM Active	WAM Active Limited
WAM Active-nominated Keybridge Directors	has the meaning given in paragraph 16
Yowie	Yowie Group Ltd
Yowie s249F Meeting	has the meaning given in paragraph 28

FACTS

Overview

3. Mr Bolton is seeking a review under section 657EA of the initial Panel's decision in *Keybridge Capital Limited 20*.²
4. We set out in detail below some (but not all) of the relevant facts discussed in the initial Panel's reasons for decision, as well as some additional facts.
5. WAM Active is an ASX-listed company (ASX code: WAA).
6. Keybridge is an ASX-listed company (ASX code: KBC).
7. Yowie is an ASX-listed company (ASX code: YOW).
8. WAM Active has a relevant interest in approximately 43.5% of Keybridge.
9. Catalano Super has a relevant interest in approximately 10.76% of Keybridge.
10. At all relevant times, Yowie was a subsidiary of Keybridge.

² [2025] ATP 20

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11. Prior to 10 February 2025, the directors of Keybridge were Messrs Nicholas Bolton, Antony Catalano, Richard Dukes, and John Patton (the **Previous Keybridge Directors**).
12. On 9 May 2025, Keybridge announced that Mr Bolton had been suspended from his role as Chief Executive Officer of Keybridge.³
13. Prior to June 2025, the directors of Yowie were Messrs Bolton,⁴ Patton,⁵ Andrew Ranger,⁶ Diesel Schwarze,⁷ and Daniel Agocs.⁸
14. In addition to his duties as Chief Executive Officer of Keybridge, Mr Bolton was also Chief Executive Officer of Yowie until no later than 7 July 2025.⁹

Events preceding the initial application

15. On 9 February 2025 – the day before a meeting of Keybridge called by WAM Active at which resolutions for the removal of the Previous Keybridge Directors were to be considered was to be held – the Previous Keybridge Directors passed a resolution appointing a voluntary administrator of Keybridge.
16. On 10 February 2025, at the meeting called by WAM Active, the Previous Keybridge Directors (other than Mr Catalano)¹⁰ were removed and Messrs Geoff Wilson, Jesse Hamilton, Martyn McCathie, and Sulieman Ravell (the **WAM Active-nominated Keybridge Directors**) were appointed as directors of Keybridge.¹¹
17. Mr Patton, who was chairing the meeting, purported to adjourn the meeting to a later (unspecified) date, without putting any of the resolutions to a vote.¹² Mr Hamilton assumed the role of chairperson, conducted the business of the meeting, and read out the results of its resolutions.¹³
18. On 11 February 2025, WAM Active commenced proceedings in the Supreme Court of New South Wales seeking a declaration that the results of the meeting were those read out by Mr Hamilton and orders including an order that the voluntary administration of Keybridge should end.¹⁴

³ See Keybridge Capital Limited, 'Court of appeal confirms Keybridge directors replaced and administration has ended, change of registered office' (ASX Announcement, 9 May 2025)

⁴ Mr Bolton resigned on or about 17 June 2025

⁵ Mr Patton resigned on or about 17 June 2025

⁶ Mr Ranger resigned on or about 22 June 2025

⁷ Mr Schwarze was removed as a director of Yowie on 27 June 2025

⁸ Mr Agocs was removed as a director of Yowie on 27 June 2025

⁹ We do not need to, and we do not, make a finding about whether Mr Bolton's executive roles were terminated upon his resignation as a director of Yowie on or about 18 June 2025 or at another time: see Yowie Group Ltd, 'Change of Company Secretary and automatic termination of executive appointments of former directors' (ASX Announcement, 10 July 2025)

¹⁰ The resolution for the removal of Mr Catalano as a director of Keybridge failed: see *In the matter of Keybridge Capital Limited* [2025] NSWSC 240 at [7]

¹¹ *Ibid* at [376]

¹² *Ibid* at [7], [165], [225], [227]

¹³ *Ibid* at [242]

¹⁴ *Ibid* at [11]

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19. On 12 February 2025, WAM Active sent a letter addressed to the directors of Keybridge (the **Comfort Letter**). The Comfort Letter was expressed to be “*for the purpose of giving comfort to [Messrs Wilson, Hamilton, McCathie, and Ravell] that the Company is not insolvent or likely to become insolvent.*” It included an undertaking given by WAM Active to provide funding to Keybridge if Keybridge “*is unable or likely to be unable to pay a debt or liability from its own moneys*”. The Comfort Letter was subject to certain conditions, including that Messrs Bolton, Patton, and Dukes had been removed as directors of Keybridge; and that Messrs Wilson, Hamilton, McCathie and Ravell were directors of Keybridge and comprised a majority of its board.
20. On 6 March 2025, WAM Active provided a term sheet which set out in greater detail (compared to the Comfort Letter) the terms on which WAM Active would provide funding to Keybridge (the **Term Sheet**).¹⁵
21. On 21 March 2025, in the proceedings commenced by WAM Active on 11 February 2025, Nixon J determined that, subject to the resolution of certain issues that had been raised by the administrator of Keybridge, the Term Sheet provided “*a basis to conclude that Keybridge is solvent and therefore a basis to conclude that the administration should be brought to an end.*”¹⁶
22. On 14 April 2025, the proceedings having been stood over so that those issues could be dealt with, Nixon J made an order under section 447A that the administration of Keybridge was to end.¹⁷
23. On 17 April 2025, that order was stayed by Leeming JA until 8 May 2025 after Mr Bolton appealed the order to the New South Wales Court of Appeal.¹⁸
24. On 8 May 2025, the New South Wales Court of Appeal dismissed Mr Bolton’s appeal.¹⁹
25. On the same day, a board committee of Yowie resolved to make a scrip bid for Keybridge.
26. On 9 May 2025, Yowie announced its intention to make a scrip bid for Keybridge (the **Bid**) on an extensive range of conditions including:
 - (a) that Keybridge not seek to change the composition of the Yowie board
 - (b) that Keybridge not encumber its assets
 - (c) that “ASIC provides [Yowie] an exemption under section 259C(2) of the Corporations Act from the operation of section 259C(1) for the purposes of Yowie acquiring [Keybridge shares]”.²⁰

¹⁵ The Term Sheet was later minorly revised on 28 March 2025: *In the matter of Keybridge Capital Limited (No 2)* [2025] NSWSC 354 at [40]–[43]

¹⁶ *In the matter of Keybridge Capital Limited* [2025] NSWSC 240 at [371]

¹⁷ *In the matter of Keybridge Capital Limited (No 2)* [2025] NSWSC 354 at [223]

¹⁸ *Bolton v WAM Active Limited* [2025] NSWCA 81

¹⁹ *Bolton v WAM Active Limited (No 2)* [2025] NSWCA 99

²⁰ Section 259C contains the prohibition against indirect self-acquisitions

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27. On 16 May 2025, Keybridge made an announcement on ASX that shareholders should “*take no action*” in relation to the Bid. The announcement stated that Keybridge did not consider the Bid to be genuine, including because of “*the sheer number and breadth of the 35 defeating conditions to the ‘Bid’, many of which will be breached by Keybridge securing operational control of its subsidiary, Yowie.*”
28. On or about 26 May 2025, Keybridge called a section 249F meeting to seek to replace the Yowie board (the **Yowie s249F Meeting**). The calling of the Yowie s249F Meeting for 27 June 2025 at 10 am was announced on ASX on 5 June 2025. The notice of meeting was executed by Messrs Hamilton and Ravell.
29. On or about 29 May 2025, Australian Style Group Pty Ltd, a company connected to Mr Bolton and a substantial shareholder of Keybridge, called a section 249F meeting of Keybridge seeking to remove the WAM Active-nominated Keybridge Directors from its board. The calling of the meeting for 27 June 2025 at 9 am was announced on ASX on 13 June 2025.
30. On 6 June 2025, by notice dated 5 June 2025, Keybridge announced that it had entered a bridge funding facility (the **Bridge Funding Facility**) under which it would have access to funding provided by “*WAM Active and other entities within the Wilson Asset Management Group*”. The announcement stated that the “*Bridge Funding Facility was negotiated with [WAM Active] on an arm’s length basis by those of Keybridge’s directors who are independent of the Wilson Asset Management Group.*”
31. On 13 June 2025, Yowie lodged its bidder's statement with ASIC. The Bid included the following condition that:

“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.” (the **No Board Change Condition**)
32. Yowie’s bidder’s statement disclosed that the Bid did not include the condition relating to ASIC relief under s259C(2) (mentioned in paragraph 26(c) above) but included the following conditions instead:
 - (a) a 35% minimum acceptance condition (excluding any relevant interest by reason of Keybridge controlling Yowie) (the **Minimum Acceptance Condition**) and
 - (b) that by “*no later than the end of the Offer Period, Keybridge does not control (within the meaning of section 259E of the Corporations Act) Yowie*” (the **No Control Condition**).
33. Yowie’s bidder’s statement stated that:

“Neither the Minimum Acceptance Condition nor the No Control Condition may be waived by Yowie. Despite the previous sentence, Yowie may fulfil the No Control Condition by issuing Yowie Shares to those Keybridge Shareholders who have accepted the Offer if the effect of the issue is that Keybridge does not control (within the meaning of section 259E of the Corporations Act) Yowie immediately after the issue. ...

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“The satisfaction or waiver of the Minimum Acceptance Condition and the No Control Condition are each a condition precedent to the formation of any contract arising from acceptance of an Offer. Yowie will not process acceptances while either Condition has not been fulfilled or waived. As a result, if you accept the Offer, you will be able to revoke your acceptance at any time while either Condition has not been fulfilled or waived. Neither such Condition can be waived at any time while Keybridge continues to control Yowie. However, the No Control Condition can be fulfilled by Yowie issuing Yowie Shares to those Keybridge Shareholders who have accepted the Offer if the effect of the issue would be that Keybridge no longer controls Yowie.”

34. On 20 June 2025, the Supreme Court of New South Wales made declarations that the notices given by Keybridge in relation to the Yowie s249F Meeting were valid.²¹ The Court also ordered that an independent chair conduct the Yowie s249F Meeting.²²

The initial application and the Yowie s249F Meeting

35. On 26 June 2025, the day before the Yowie s249F Meeting was to be held, Mr Bolton (in his capacity as a shareholder of Keybridge) sought a declaration of unacceptable circumstances. He submitted, among other things, that:
- (a) WAM Active and Yowie were competing for control of Keybridge, WAM Active doing so using Keybridge’s need for funding and Yowie doing so through “a s602 compliant bid”
 - (b) the WAM Active-nominated Keybridge Directors were participating insiders²³ in relation to the Bid
 - (c) the WAM Active-nominated Keybridge Directors had sought to trigger the No Control Condition of the Bid by causing Keybridge to call the Yowie s249F meeting and to put resolutions for the removal of the directors of Yowie at that meeting, as a result of which (according to Mr Bolton), if those resolutions succeeded, Keybridge would control Yowie for the purposes of section 259C;²⁴ and this conduct engaged the Panel’s policy on frustrating actions²⁵
 - (d) by entering into the agreement in relation to the Bridge Funding Facility, “WAM [Active] and Keybridge became associates of each other, [Mr] Ravell and WAM [Active] became associates [of] each other in the affairs of Keybridge ... and Keybridge became [an associate] of each of the [WAM Active-nominated Keybridge Directors]”.

²¹ *In the matter of Yowie Group Ltd* [2025] NSWSC 648 at [82]

²² *Ibid* at [65]

²³ See generally Guidance Note 19: Insider Participation in Control Transactions

²⁴ See section 259E (When a company controls an entity)

²⁵ See generally Guidance Note 12: Frustrating Action

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36. On 27 June 2025, the Yowie s249F Meeting took place.²⁶ At the meeting, Messrs Schwarze and Agocs were removed as directors of Yowie²⁷ and Messrs Wilson, Hamilton, McCathie, Catalano, and Ravell were elected as directors of Yowie.²⁸
37. On 10 July 2025 at 10:33 am, Yowie announced that the Bid was not proceeding.²⁹ Its announcement stated that:

“Yowie notes that, following the outcome of the extraordinary general meeting held on 27 June 2025, the ‘no change to Yowie Board composition’ condition to the Bid has been triggered. After considering all aspects of the Bid and the Bidder’s Statement, it is not in Yowie’s interest to proceed with the Bid. Accordingly, Yowie does not intend to proceed with the despatch of the Bidder’s Statement, as to do so would be futile, including because the Bid would close with a defeating condition breached. This announcement has been authorised for release by Antony Catalano and Sulieman Ravell, directors of Yowie.”

38. On 10 July 2025 at 2:32 pm, the initial Panel declined to conduct proceedings.

APPLICATION

39. On 15 July 2025, Mr Bolton requested the President’s consent to apply for a review of the decision of the initial Panel.
40. Mr Bolton submitted that the initial Panel erred in a number of respects,³⁰ including:
- (a) by “considering that the substance of the application had already been decided by either a court or by [Takeovers Panel] proceedings”
 - (b) by considering that the Yowie Bid was highly conditional and therefore not a genuine opportunity for Keybridge shareholders
 - (c) by forming a view that it was not appropriate to make remedial orders where circumstances had been overtaken by events, and
 - (d) by “not forming a view that insider participation in the circumstances was unacceptable”.
41. Mr Bolton stated that no court or Panel had previously considered the implications of:
- (a) “[p]articipating insiders at Keybridge that acted specifically to terminate the [Bid] to advance their competing interests for control in [Keybridge]” or
 - (b) the “s606 breach that occurred at both Keybridge and Yowie as a consequence of the [Bridge Funding Facility] (by causing various WAM parties to acquire a voting power

²⁶ The Keybridge meeting referred to above in paragraph 29 was held on the same day. All of the resolutions for the removal of the WAM Active-nominated Keybridge Directors failed: see Keybridge Capital Limited, ‘Results of Meeting’ (ASX Announcement, 30 June 2025). As a result, following the Yowie s249F Meeting, the directors of Keybridge and Yowie were the same

²⁷ Messrs Bolton, Patton, and Ranger had earlier resigned: see footnotes 4 to 6 above

²⁸ Yowie Group Ltd, ‘Results of Yowie s.249F Meeting’ (ASX Announcement, 30 June 2025)

²⁹ Yowie Group Ltd, ‘Yowie Group Limited will not proceed with despatch of Offers and Bidder’s Statement’ (ASX Announcement, 10 July 2025)

³⁰ See Guidance Note 2: Reviewing Decisions at [29(b)]

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from below 20% to above 20% [sic] without an exception under s611 (noting the operation of s610(3))), and the subsequent using of votes on shares the subject of this s606 breach both by Keybridge at a Yowie shareholder meeting and by WAM [Active] in a Keybridge shareholder meeting the same day to effect a change of control.”

42. Mr Bolton also submitted that the following events constituted a “change in circumstances since the Initial Panel met”:³¹
- (a) Yowie’s withdrawal of the Bid and
 - (b) Yowie not making offers pursuant to the Bid or dispatching the bidder’s statement.
43. In an out of process submission dated 5 August 2025, Mr Bolton also submitted (among other things) that the initial Panel³² “failed to consider WAM’s [sic] concession in [Keybridge Capital Limited 17] that it [sic] was a participating insider if the Yowie bid were to proceed and that since that concession, the bid had in fact proceeded for the purposes of s633 by the lodgement of the bidder’s statement with ASIC and the Target.”
44. In those proceedings, Keybridge had submitted that:
- “the [Bid] is not a genuine bid. In the event the [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.”³³*

Interim orders sought

45. Mr Bolton sought interim orders:
- (a) requiring Yowie to dispatch the bidder’s statement and
 - (b) precluding Yowie from relying on the No Board Change Condition until the conclusion of the Panel proceedings.

Final orders sought

46. Mr Bolton did not specify any final orders in the review application. We presumed that he continued to seek the final orders specified in the initial application although, given our conclusions (set out below), it was not necessary for us to confirm whether this was the case.

³¹ See *ibid* at [29(a)]

³² Which was the same sitting Panel constituted to hear *Keybridge Capital Limited 17* [2025] ATP 15 (and other matters involving Keybridge and Yowie), a course of action to which the parties did not object

³³ See *Keybridge Capital Limited 17* [2025] ATP 15 at [95]

DISCUSSION

Acting President's consent

47. The President's approach to consenting to a review is guided by the following considerations:³⁴
- (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.
48. The Acting President considered that, given the complexity of the factual matrix underlying the initial application and the review application, it was possible that the matter would benefit by reconsideration. He also noted that Mr Bolton had suggested (by Mr Bolton's statement that there had been a "*change in circumstances*") that there might be new evidence. On the other hand, the Acting President considered that the policy that there should be a prompt conclusion to Panel proceedings weighed against granting consent to the review application, particularly given the number of Panel matters to date. Although the considerations were finely balanced, the Acting President decided to provide his consent to the review application.

Our role

49. The role of a review Panel is to conduct a *de novo* review.³⁵
50. In conducting our review, we had regard to all of the material before us, including the material relating to events that occurred after the initial Panel's decision;³⁶ but we address specifically only that part of the material we consider necessary to explain our reasoning.

Process

51. After we received the materials relating to both the initial application and the review application, we formed a preliminary view that there was no reasonable prospect that we would make a declaration of unacceptable circumstances. However, the initial Panel's reasons had not at that stage been published. We decided not to make a decision until we had reviewed the initial Panel's reasons and the parties' comments on those reasons,³⁷ which we subsequently received.

³⁴ Guidance Note 2: Reviewing Decisions

³⁵ *Eastern Field Developments Limited v Takeovers Panel* [2019] FCA 311 at [181]

³⁶ As to which, see *CEMEX Australia Pty Ltd v Takeovers Panel* [2008] FCA 1572 at [16] (appeal dismissed *CEMEX Australia Pty Ltd v Takeovers Panel* [2009] FCAFC 78); see also *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577, 589

³⁷ See Guidance Note 2: Reviewing Decisions at [36]

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52. In his comments on the initial Panel's reasons, Mr Bolton suggested that the initial Panel should not have formed a view on certain issues which, according to Mr Bolton, were not explicitly raised by the initial application. These issues included a potential association between Mr Catalano and WAM Active³⁸ and a potential contravention of section 606 as a result of that potential association.³⁹
53. On this point, we agree with the statement of the Panel in *BreakFree Limited 04R* that the Panel is "*entirely justified in considering all the factual matters and other issues that are raised by the application and all facts and issues that are logically connected with those factual matters and other issues*"⁴⁰ (emphasis added).
54. If the Panel were unable to consider factual matters and other issues that are logically connected with those in, but not explicitly raised by, an application, it would be unable to "*reach outcomes according to considerations of practicality, policy, economic impact, commercial and market factors and the public interest.*"⁴¹ That is why the Panel stated in *BreakFree Limited 04R* that the Panel "*must be able to include in its inquiry the contribution to the acceptability or otherwise of all elements of the factual matrix on which the application depends.*"⁴²
55. In addition, our review is not limited by the findings of the initial Panel or confined to the grounds raised in the review application.⁴³ We are entitled to consider the whole of the initial application and any new circumstances, although we are not obliged to go further than the review application if we do not consider it necessary.⁴⁴
56. Accordingly, we do not think that we are (or the initial Panel were) precluded from considering whether there has been a contravention of section 606 or a potential association between Mr Catalano and WAM Active or, indeed, any other matter which is logically connected with the matters raised by the initial application or the review application.

What we considered

57. We endorse and adopt the initial Panel's reasons, subject to our further comments set out below.

Insider participation

58. In relation to the alleged insider participation by the WAM Active-nominated Keybridge Directors, the initial Panel stated that it was of the view that "*there is no reasonable prospect that this would lead to unacceptable circumstances in the circumstances of this matter and on the materials provided.*"⁴⁵ The initial Panel also stated that imposing on Keybridge a requirement for an independent board committee would

³⁸ *Keybridge Capital Limited 20* [2025] ATP 20 at [62]–[64]

³⁹ *Ibid* at [65]–[66]

⁴⁰ *BreakFree Limited 04R* [2003] ATP 42 at [47]

⁴¹ *Attorney-General (Cth) v Alinta Ltd* [2008] HCA 2 at [45] (Kirby J)

⁴² *BreakFree Limited 04R* [2003] ATP 42 at [48]

⁴³ *Molopo Energy Limited 03R, 04R & 05R* [2017] ATP 12 at [41]

⁴⁴ *The Agency Group Australia Limited 03R* [2021] ATP 5

⁴⁵ *Keybridge Capital Limited 20* [2025] ATP 20 at [56]

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be “an unreasonable burden” because it was “not persuaded that the Bid has any realistic prospect of proceeding”.⁴⁶

59. We agree with the initial Panel that there was no reasonable prospect that the alleged insider participation by the WAM Active-nominated Keybridge Directors would lead to unacceptable circumstances in the circumstances of this matter. We came to this conclusion in part because we formed the view that there was no realistic prospect of the Bid proceeding at the time at which the conduct said to constitute insider participation occurred or thereafter, including because of the highly conditional nature of the bid and the history of disputes between the key parties.
60. We considered Keybridge’s submission referred to above in paragraph 44. It did not change our view in this regard.
61. We also agree with the initial Panel that “WAM [Active] is not competing with Yowie for control of Keybridge [through the Bridge Funding Facility] as it already has practical control.”

Frustrating action

62. In relation to the question of whether Keybridge had engaged in frustrating action, the initial Panel stated that:

“We addressed the issue of frustrating action in [Keybridge Capital Limited 17 [2025] ATP 15]. The issue was also raised on review of our decision by the review Panel in [Keybridge Capital Limited 18R [2025] ATP 17]. The change in condition (assuming it does not run foul of section 631) does not change the position in our view. ... Indeed, a number of the submissions in the application sought to revisit, or substantially overlapped with, matters that had already been considered and determined in earlier court and Panel proceedings. Yet others were highly technical.”⁴⁷

63. We considered that neither Yowie’s withdrawal of the Bid on 10 July 2025 nor its not making offers pursuant to the Bid or dispatching the bidder’s statement constituted a new set of circumstances. Those events were inextricable from the events in the initial Panel proceedings. We agree with the initial Panel that the Bid did not have any realistic prospect of proceeding and accordingly consider that Keybridge has not acted to frustrate the Bid in a way that would give rise to unacceptable circumstances.

Association

64. In relation to the various alleged associations referred to in paragraph 35(d) above, the initial Panel concluded that to “the extent that Mr Bolton is making an association claim ... we consider that it is not supported by evidence”⁴⁸ and that it was “not satisfied

⁴⁶ Ibid at [57]

⁴⁷ Ibid at [71] and [73]

⁴⁸ Ibid at [63]

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that the application meets the Mount Gibson hurdle for conducting proceedings on [an] application in relation to association”.⁴⁹

65. We agreed with the initial Panel that, to the extent that Mr Bolton raised issues of association (which, in relation to Mr Catalano and WAM Active, we understand is denied by Mr Bolton), the application did not meet the *Mount Gibson* hurdle.

Alleged breach of section 606

66. The initial Panel considered that it did not need to decide whether there has been a breach of section 606 in relation to Keybridge.⁵⁰ For the reasons set out below, we came to the same conclusion.
67. The purpose of section 606 is closely related to the purposes of Chapter 6 more generally. So much has been recognised in the description of that section by the Panel in *MYOB Limited* as “a cornerstone of the takeovers legislation, fundamental to the achievement of the purposes of Chapter 6 as set out in s602.”⁵¹ As a result, the Panel may be more inclined to find a contravention of section 606 unacceptable.⁵² But it is not the case that any contravention of Chapter 6, 6A, 6B, or 6C is *per se* unacceptable.⁵³
68. Drawing on our skills, knowledge, and experience,⁵⁴ we considered that this case was one in which, even if a contravention of section 606 had been established (a matter which we did not decide), it was unlikely that the circumstances would have been unacceptable given that the parties to the alleged contravention were entities also within the Wilson Asset Management Group, so that the practical effect of such a contravention in relation to the control of Keybridge would be immaterial.

The other issues raised in the review application

69. We considered that it was not necessary for us to come to a view on the other issues raised in the review application (described above at paragraph 40) given our conclusions above in paragraphs 58 to 68.

Use of the Panel

70. This was the seventh of eight matters involving Keybridge and/or Yowie brought before the Panel in 2025 to date (to say nothing of the numerous court proceedings also involving Keybridge and Yowie).⁵⁵ Many of those matters involved issues closely related to the issues in this matter. We observed that the proceedings sometimes involved overly technical distinctions between what were said to be the

⁴⁹ Ibid at [64] citing *Mount Gibson Iron Limited* [2008] ATP 4

⁵⁰ Ibid at [66]

⁵¹ *MYOB Limited* [2008] ATP 27 at [34]

⁵² *Yowie Group Limited 01 & 02* [2019] ATP 10 at [46]

⁵³ Ibid at [47]

⁵⁴ *Tinkerbell Enterprises Pty Limited as Trustee for The Leanne Catelan Trust v Takeovers Panel* [2012] FCA 1272 at [114]

⁵⁵ The other Panel matters were *Yowie Group Ltd 04 & 05* [2025] ATP 22, *Keybridge Capital Limited 17* [2025] ATP 15, *Keybridge Capital Limited 18R* [2025] ATP 17, *Yowie Group Ltd 06 & Keybridge Capital Limited 19* [2025] ATP 23, *Keybridge Capital Limited 20* [2025] ATP 20, and *Yowie Group Ltd 07* [2025] ATP 27 (to be published)

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different circumstances in each case. For example, issues of insider participation in relation to the Bid have now been raised – and dismissed – in two initial proceedings and two review proceedings.⁵⁶ Repeated arguments about the same or very similar issues do not serve a useful purpose. If there is another Panel application brought in relation to these issues, the sitting Panel would (in our view) be justified in declining to conduct proceedings on this basis alone. It would also be justified in giving serious consideration to whether to exercise either of the powers conferred by section 658A (including the power under paragraph 658A(1)(b) to, subject to the Panel being satisfied that an application is frivolous or vexatious, make a direction that the person who made the application must not, without the leave of the Panel, make a subsequent application of a kind or kinds specified in the direction).

71. We consider that it is not against the public interest to decline to conduct proceedings.

DECISION

72. 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).
73. 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.

Christian Johnston

President of the sitting Panel

Decision dated 11 August 2025

Reasons given to parties 8 October 2025

Reasons published 21 October 2025

⁵⁶ Namely *Keybridge Capital Limited 17* [2025] ATP 15, *Keybridge Capital Limited 20* [2025] ATP 20, *Keybridge Capital Limited 18R* [2025] ATP 17, and this matter

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Advisers

Party	Advisers
Mr Nicholas Bolton	-
Keybridge	Gadens
Yowie	Gilbert + Tobin