



Australian Government

Takeovers Panel

Reasons for Decision Yowie Group Ltd 07 [2025] ATP 27

Catchwords:

Section 606 – substantial holding notice – voting power – relevant interest – request for direction that application frivolous and vexatious – decline to make direction sought – decline to conduct proceedings

Corporations Act 2001 (Cth), sections 606, 608(3), 610(1), 610(3), s657C(3), s658A

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, Queensland North Australia Pty Ltd v Takeovers Panel [2015] FCAFC 68, Attorney-General (NSW) v Wentworth (1988) 14 NSWLR 481

Guidance Note 1: Unacceptable Circumstances

Yowie Group Ltd 04 & 05 [2025] ATP 22, Keybridge Capital Limited 17 [2025] ATP 15, Keybridge Capital Limited 20 [2025] ATP 20, Yowie Group Ltd 01 & 02 [2019] ATP 10, The President's Club Limited 02 [2016] ATP 1

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

INTRODUCTION

1. The Panel, Marina Kelman, Rebecca Maslen-Stannage and Bruce McLennan (sitting President), declined to conduct proceedings on an application by Mr Nicholas Bolton. The application concerned alleged contraventions of sections 606 and 671B by one or more entities within the WAM Group and other persons connected to the WAM Group in relation to Yowie. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.
2. In these reasons, the following definitions apply.

AFSL	Australian Financial Services Licence
Bridge Funding Facility	has the meaning given in paragraph 20
Comfort Letter	has the meaning given in paragraph 10
Current Keybridge Directors	has the meaning given in paragraph 9
Facility Agreement	the agreement between Keybridge (as borrower) and WAM Active and the Other WAM Entities (as financier) for the provision of the Bridge Funding Facility
Keybridge	Keybridge Capital Limited

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Keybridge Director Notices	has the meaning given in paragraph 18
Keybridge Notice	has the meaning given in paragraph 15
Other WAM Entities	has the meaning given in paragraph 20
Term Sheet	has the meaning given in paragraph 11
WAM Active	WAM Active Limited
WAM Group	Wilson Asset Management Group
WAMI	Wilson Asset Management (International) Pty Ltd
WAM Group Notice	has the meaning given in paragraph 16
Yowie	Yowie Group Ltd
Yowie Placement	has the meaning given in paragraph 14

FACTS

3. Yowie is an ASX-listed company (ASX code: YOW).
4. Keybridge is an ASX-listed company (ASX code: KBC).
5. WAM Active is an ASX-listed company (ASX code: WAA).
6. The HHY Fund (of which Aurora Funds Management Limited is the responsible entity) is a managed investment scheme.
7. At all relevant times:
 - (a) Yowie was a subsidiary of Keybridge.
 - (b) the HHY Fund held a relevant interest in Yowie of about 9.98%.
 - (c) Keybridge held a relevant interest in the HHY Fund of more than 20%.
 - (d) WAM Active held a relevant interest in Keybridge of more than 20%.
8. On 9 February 2025, the then-incumbent directors of Keybridge, Messrs Nicholas Bolton, John Patton, Richard Dukes, and Antony Catalano, who were at that time the subject of a proposed resolution for their removal put forward by WAM Active,¹ passed a resolution to appoint a voluntary administrator of Keybridge.
9. On 10 February 2025, at the meeting called by WAM Active, the then-incumbent directors of Keybridge (other than Mr Catalano)² were removed and Messrs Geoff Wilson, Jesse Hamilton, Martyn McCathie, and Sulieman Ravell (the **Current Keybridge Directors**) were appointed as directors of Keybridge.³

¹ See *In the matter of Keybridge Capital Limited* [2025] NSWSC 240 at [4]

² 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]

³ Ibid at [376]

10. 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”.
11. 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**).⁴
12. 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.”⁵
13. 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 with immediate effect.⁶
14. On or before 15 May 2025, Yowie made a placement (the **Yowie Placement**) of 34,405,185 shares, equalling 15% of its share capital. The Yowie Placement was the subject of separate Panel proceedings in *Yowie Group Ltd 04 & 05*.⁷
15. On or about 16 May 2025, Keybridge gave a substantial holding notice (the **Keybridge Notice**) to Yowie disclosing a relevant interest in Yowie of 81.17% (previously 78.34%) which, according to Keybridge, was the result of the Yowie Placement. The notice stated that Keybridge’s relevant interest in Yowie had increased because Yowie “is taken under section 608(1)(c) of the Corporations Act to have a relevant interest in the 34,405,185 ordinary shares issued by [Yowie] to other investors (per [Yowie’s] ASX announcement and Appendix 3B dated 12 May 2025) as the shares are subject to a 12-month holding block [sic].” In the notice, Keybridge stated that this resulted in Keybridge’s relevant interest in Yowie increasing despite its voting power in Yowie decreasing (Keybridge having been diluted by the Yowie Placement).
16. On or about 19 May 2025, certain entities within the WAM Group⁸ gave a substantial holding notice (the **WAM Group Notice**) to Yowie disclosing various relevant interests in Yowie as a result of Yowie shares held by Keybridge and by the HHY Fund, which those entities were (according to the notice) deemed to hold under

⁴ 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]

⁵ *In the matter of Keybridge Capital Limited* [2025] NSWSC 240 at [371]

⁶ *In the matter of Keybridge Capital Limited (No 2)* [2025] NSWSC 354 at [223]. 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: *Bolton v WAM Active Limited* [2025] NSWCA 81. On 8 May 2025, the New South Wales Court of Appeal dismissed Mr Bolton’s appeal: *Bolton v WAM Active Limited (No 2)* [2025] NSWCA 99.

⁷ [2025] ATP 22

⁸ Listed in Annexure A of WAM Group, ‘Change in substantial holding from WAM/WAA/WAR’ (ASX Announcement, 19 May 2025)

section 608⁹ because those entities each had a combined voting power of greater than 20% in Keybridge and the HHY Fund (which each had a relevant interest in Yowie).¹⁰

17. The notice explained that (emphasis in original):

*“The Wilson Asset Management Group **does not beneficially own, and exerts no control or influence over**, Yowie Group Limited (ASX: YOW) shares in which members of the Wilson Asset Management Group are determined to hold an indirect deemed relevant interest in, in accordance with Section 671B of the Corporations Act 2001. As detailed in the enclosed notice, members of the Wilson Asset Management Group are determined to hold an indirect deemed relevant interest in YOW shares held by Keybridge Capital Limited (**KBC**) and HHY Fund (**HHY**). The Corporations Act determine these indirect deemed relevant interests to exist primarily as a result of the members of the Wilson Asset Management Group holding (in aggregate) voting power in excess of 20% in each of KBC and HHY. ...*

*The Corporations Act requires the Wilson Asset Management Group to submit this form on the ASX despite the **Wilson Asset Management Group not holding any direct shares in YOW**. The primary purpose of this notice is to disclose certain indirect deemed relevant interests that members of the Wilson Asset Management Group are indirectly deemed to hold in YOW pursuant to the Corporations Act.”*

18. On or about 20 May 2025, the Current Keybridge Directors gave substantial holding notices (the **Keybridge Director Notices**) to Yowie disclosing a relevant interest in Yowie of 81.17% on the basis that they had each “consented to be nominated by Keybridge for election as directors of Yowie at the next general meeting of Yowie” which “could be taken to give rise to a technical association between” the Current Keybridge Directors and Keybridge.
19. Each of the Keybridge Notice, the WAM Group Notice, and the Keybridge Director Notices contained a statement to the effect that Yowie had a relevant interest in the Yowie Placement shares because the shares were subject to a 12-month holding lock.
20. On 6 June 2025, by notice dated 5 June 2025, Keybridge announced that it had entered into a bridge funding facility provided by “WAM Active and other entities within the Wilson Asset Management Group” (the **Bridge Funding Facility**) (the unspecified “other entities within the Wilson Asset Management Group” being hereafter referred to as the **Other WAM Entities**). The announcement detailed that the Bridge Funding Facility was to be secured, subject to an ASX waiver, by “first ranking security over all present and after acquired property of [Keybridge] and [its wholly-owned subsidiaries]” and, before an ASX waiver in relation to Listing Rule 10.1 was granted, by “security up to 5% of the equity interests of [Keybridge’s] last accounts given to ASX under the Listing Rules.” It also stated that the Bridge Funding Facility would be secured by (among other things) a General Security Deed, subject to an ASX waiver being granted.

⁹ 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)

¹⁰ See subsection 608(3)

21. On 2 July 2025, Keybridge announced that it had been granted a waiver by ASX “in respect of Listing Rule 10.1 to the extent necessary to permit Keybridge, without obtaining shareholder approval, to grant security ... over the assets of Keybridge in favour of WAM Active to secure Keybridge’s obligations under the Bridge Funding Facility.”

APPLICATION

22. By application dated 5 August 2025, Mr Bolton sought a declaration of unacceptable circumstances. Mr Bolton submitted that:
- (a) “by applying s610(3) to the operation of s606(1), each entity of the [Other WAM Entities] have contravened s606 by acquiring an interest in Yowie from below 20% to above 20% without a permissible exception under s611” through the security interest acquired by one or more of the Other WAM Entities pursuant to the Facility Agreement
 - (b) each of “the [Other WAM Entities], WAM Active, Keybridge and Messrs Wilson, Ravell, Hamilton, McCathie, and Catalano ... have contravened s671B by disclosing a voting interest in Yowie of 81.17% when their actual interests were, at least, 12.75% less” and
 - (c) these alleged contraventions were made more serious by the fact that Wilson Asset Management (International) Pty Ltd (**WAMI**), which Mr Bolton said was the “investment manager of each of the [Other WAM Entities]”, is the holder of an Australian Financial Services Licence (**AFSL**).
23. Mr Bolton submitted that the effect of the circumstances was that “[t]he acquisition of control over Yowie is not taking place in an efficient, competitive and informed market”.
24. Mr Bolton did not seek any interim orders.
25. Mr Bolton sought final orders that:
- (a) Keybridge be prohibited from voting any of its shares in Yowie in excess of a 20% relevant interest, and
 - (b) the Other WAM Entities, WAM Active, Keybridge, and the Current Keybridge Directors be required to give new substantial holder notices which do not include disclosure of any interests in the Yowie Placement shares.

DISCUSSION

26. We have considered all the material but address specifically only that part of the material we consider necessary to explain our reasoning.

Out of time?

27. In its preliminary submission, WAM Active submitted that the application was out of time (for the purposes of section 657C(3)(a)) because the Bridge Funding Facility was merely “the culmination of a series of funding proposals from WAM Active to Keybridge commenced under [the Comfort Letter] dated 12 February 2025 executed by WAM

Active as a deed, and [the Term Sheet] dated 6 March 2025” and that Keybridge’s entry into the Facility Agreement was “not a new circumstance”.

28. An application for a declaration of unacceptable circumstances can only be made within 2 months after the circumstances have occurred (or a longer period determined by the Panel).¹¹ Circumstances ‘occur’ when they come to exist or arise,¹² so that a circumstance which came to exist or arose more than 2 months ago ‘occurred’ more than 2 months ago even if the effects of those circumstances are ongoing.¹³
29. In this case, our preliminary view was it was possible that the circumstances occurred earlier than early June, when Keybridge entered the Facility Agreement. WAM Active’s provision of the Bridge Funding Facility could have been viewed instead as the culmination of a series of steps taken by WAM Active, beginning with the Comfort Letter in early February, to provide financial accommodation to Keybridge.
30. If the circumstances occurred earlier than June, then the application would be out of time and we would need to consider whether to extend time under paragraph 657C(3)(b). However, given our other conclusions (set out below), we did not need to decide whether the application was out of time.

Alleged contravention/s of section 606

Significance of section 606

31. Mr Bolton submitted that:

“Section 606 is the cornerstone provision upon which takeover regulation in Australia turns and the structure of s657A(2) establishes that every contravention of Chapter 6, 6A, 6B or 6C is, per se, unacceptable. Whereas paragraphs 657A(2)(a) and (b) refer either to the effect of the relevant circumstances or their likely effect on certain activities or on their being otherwise unacceptable by reference to their effect and the purposes set out in s602, paragraph 657A(2)(c) makes circumstances unacceptable ‘because’ they constituted, constitute or will likely constitute, or they gave rise to, give rise to or will likely give rise to, a contravention of the specified legislation. Accordingly, Parliament has specifically provided that if circumstances involve a contravention then they are unacceptable.

“Any contravention of s606 should be regarded as unacceptable because there are well-known and generous exceptions provided in s611 which cover likely circumstances of what would otherwise be an “acceptable” contravention. If there were proper reasons why a further exemption would be appropriate in a particular circumstance, the relevant person could apply to ASIC for relief under s655A. The general principals [sic] underlying the contravention are well-established and common knowledge in the Australian commercial community.”

¹¹ Subsection 657C(3)

¹² *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68 at [67]–[68]

¹³ *Ibid* at [69]

32. A very similar argument was made by Keybridge (at a time when Mr Bolton was a director of Keybridge), and rejected by the Panel, in *Yowie Group Ltd 01 & 02*.¹⁴ We agree with the Panel in those proceedings that paragraph 657A(2)(c) does not operate “to provide automatically that any contravention or a likely contravention of Chapter 6, 6A, 6B or 6C is per se unacceptable”¹⁵ and that such an approach would be inconsistent with the language of section 657A and the Panel’s policy.¹⁶ However, we also acknowledge that the Panel “may be more inclined to find a contravention of s606 unacceptable, as that section is recognised as one of the cornerstone provisions of Chapter 6”.¹⁷

Was there a contravention?

33. Mr Bolton alleged that one or more of the Other WAM Entities had contravened section 606 in relation to Yowie as a result of the entry by Keybridge into the General Security Deed associated with the Facility Agreement pursuant to which those entities acquired security over all present and after acquired property of Keybridge (which included Keybridge’s shares in Yowie).
34. In its preliminary submission, WAM Active stated that it and the Other WAM Entities “have disclosed their relevant interests arising under the section 608(3) deeming provisions (due to Wilson Asset Management Group holding >20% of each of Keybridge and HHY Fund) for some years, as reflected in the ASX Form 604s for the Wilson Asset Management Group since 2019.”
35. WAM Active also stated that it and the Other WAM Entities “already had a relevant interest in Yowie’s shares under 608(3) (via the >20% shareholding in each of Keybridge and HHY). This relevant interest was held many years prior to the Bridge Funding Facility and/or its security arrangements.”
36. In its preliminary submission, Yowie stated that:
- “by operation of section 608(3) of the Corporations Act, at all relevant times [WAM Active] had a relevant interest in the Yowie shares held by Keybridge Capital Limited (Keybridge). Accordingly, in taking security over those shares, [WAM Active’s] voting power in Yowie did not increase, the condition in sub-section 606(1)(c) has not triggered, and there has been no breach of section 606. In these circumstances, section 610(3) has no application, because the condition in sub-section 610(3)(b) is not satisfied”*

¹⁴ [2019] ATP 10 at [35]

¹⁵ Ibid at [46]

¹⁶ Ibid

¹⁷ Ibid at [47]

37. We take from WAM Active’s submission that it is confirming that the Other WAM Entities were pre-existing associates of WAM Active in relation to Keybridge. If this is the case, then:
- (a) each of the Other WAM Entities would be deemed to have voting power in Keybridge equivalent to that of WAM Active (because the definition of voting power under subsection 610(1) takes into account the votes attached to all the voting shares in which the person or an associate of the person has a relevant interest)
 - (b) as a result, each of the Other WAM Entities would be deemed to have a relevant interest in the Yowie shares held by Keybridge (because subsection 608(3) would apply, WAM Active having voting power in Keybridge of above 20%)
 - (c) as a result, each of the Other WAM Entities would be deemed to have voting power in Yowie equivalent to that of Keybridge (again because of the definition of voting power under subsection 610(1))¹⁸ and
 - (d) as a result, there could be no contravention of section 606 by any of the Other WAM Entities because the condition in paragraph 606(1)(c) would not be met.
38. Mr Bolton noted in his application that it was not clear which Other WAM Entities were party to the Facility Agreement (as this was not disclosed in Keybridge’s announcement of 6 June 2025) and invited us to obtain copies of the underlying documentation to determine the exact parties involved. We note that WAM Active did not specify in its preliminary submission which Other WAM Entities were party to the transaction. In the circumstances, we consider that it is not necessary to query its submission that “*WAM Active (as well as the various other Wilson Asset Management entities referred to in the Application) already had a relevant interest in Yowie’s shares under 608(3)*”.
39. In the unlikely event that there has been a contravention by any of the Other WAM Entities of section 606, we consider that any such potential contravention would not have likely had a practical effect on the control of Yowie.
40. We also do not consider that, even if we had seen a pathway to a declaration here, there was any reasonable prospect that we would make the requested order of a voting restriction on Keybridge noting that the contraventions of section 606 were alleged to have been by one or more of the Other WAM Entities.
41. Accordingly, we consider that there is no reasonable prospect that we would make a declaration of unacceptable circumstances in relation to the alleged contravention/s of section 606.

Alleged contravention/s of section 671B

42. Mr Bolton alleged that the Keybridge Notice, the WAM Group Notice, and the Keybridge Director Notices all wrongly disclosed a relevant interest in the shares issued through the Yowie Placement. However, Mr Bolton did not articulate a basis

¹⁸ Accordingly, we agree with Yowie’s submission that subsection 610(3) has no application

on which each of those disclosures were incorrect. It appeared to us that Mr Bolton was alleging that those disclosures were incorrect because they were made on the basis that Yowie had a relevant interest in the Yowie Placement shares by virtue of a holding lock that was in place in relation to those shares¹⁹ where, in Mr Bolton's view, there was no such holding lock.

43. We are of the view that it was not unreasonable for Keybridge, the WAM Group, or the Current Keybridge Directors to disclose the relevant interests they may have had in Yowie, especially because they would not, at the time the disclosures were made, have had all of the technical details of the arrangements in relation to the Yowie Placement and because the notices set out the bases on which those relevant interests were considered to exist. In our view, therefore, the market was sufficiently informed of the nature of those persons' interests in Yowie.
44. As a result, regardless of whether there was in fact a holding lock in relation to the shares issued under the Yowie Placement, there is no reasonable prospect that we would make a declaration of unacceptable circumstances because of the alleged contravention(s) of section 671B.

WAMI's status as an AFSL holder

45. Given our conclusions about the alleged contravention of sections 606 and 671B, we do not need to consider the implications of WAMI's status as an AFSL holder.

Request for direction under section 658A

46. In its preliminary submission, WAM Active requested that the Panel consider whether to make a direction under paragraph 658A(1)(b) *"to prevent Mr Bolton from further agitating issues the subject of Keybridge Capital Limited 17 and 20."*²⁰
47. Paragraph 658A(1)(b) empowers the Panel to direct that the person who made an application must not, without the leave of the Panel, make a subsequent application to the Panel of a kind or kinds specified in the direction. The power is subject to the Panel being satisfied that the application is frivolous or vexatious.
48. WAM Active submitted that the application was both:
 - (a) frivolous, because there was *"no reasonable prospect of [it] being successfully prosecuted"*,²¹ and
 - (b) vexatious, because it was *"productive of serious and unjustified trouble or harassment to the parties following considerable effort, time and resources being expended on these matters in multiple forums including multiple expedited hearings in the NSW Supreme Court and Court of Appeal."*²²

¹⁹ See paragraph 19 above

²⁰ Referring to *Keybridge Capital Limited 17* [2025] ATP 15 and *Keybridge Capital Limited 20* [2025] ATP 20

²¹ WAM Active referred to *Spencer v Commonwealth of Australia* [2010] HCA 28 at [59]

²² WAM Active referred to *Regie Nationale des Usines Renault SA & Anor v Zhang* [2002] HCA 10 at [25]

49. In *The President's Club Limited 02*, the Panel approved of the statement of Roden J in *Attorney-General (NSW) v Wentworth* that:

*"Proceedings are vexatious if they are instituted with the intention of annoying or embarrassing the person against whom they are brought. They are vexatious if they are brought for collateral purposes, and not for the purpose of having the court adjudicate on the issues to which they give rise. They are also properly to be regarded as vexatious if, irrespective of the motive of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless."*²³

50. While we accept that there has been a number of proceedings in relation to circumstances involving Keybridge and Yowie this year, we do not consider that the grounds have been made out for a finding that this application is frivolous or vexatious.
51. Accordingly, we decline to make the direction sought by WAM Active under section 658A.

DECISION

52. 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

53. 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.

Bruce McLennan

President of the sitting Panel

Decision dated 20 August 2025

Reasons given to parties 21 October 2025

Reasons published 24 October 2025

²³ *The President's Club Limited 02* [2016] ATP 1 at [96] (quoting *Attorney-General (NSW) v Wentworth* (1988) 14 NSWLR 481, 491)

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Advisers

Party	Advisers
Nicholas Bolton	-
Yowie	Gilbert + Tobin
WAM Active	Gadens