



**Australian Government**  
**Takeovers Panel**  
**Reasons for Decision**  
**Mayne Pharma Group Limited**  
**[2025] ATP 35**

**Catchwords:**

*Declaration – orders – scheme of arrangement – change of intentions – disclosure – efficient, competitive and informed market Corporations Act 2001 (Cth), sections 602(a), 629, 631, 657A(2), 657C(3)(a), 657C(3)(b), 657D(2)(a)*

*Australian Securities and Investments Commission Act 2001 (Cth), Part 10*

*Foreign Acquisitions and Takeovers Act 1975 (Cth), sections 67, 76A, 98B, 120, 126(1)*

*In the matter of Mayne Pharma Group Ltd [2025] NSWSC 1204, In the matter of Mayne Pharma Group Limited [2025] NSWSC 513, Queensland North Australia Pty Ltd v Takeovers Panel [2015] FCAFC 68, Tower Software Engineering Pty Limited; Pendant Software Pty Limited v Harwood [2006] FCA 717*

*Guidance Note 1: Unacceptable Circumstances, Guidance Note 4: Remedies General*

*ASIC Regulatory Guide 25: False and misleading statements*

*Dropsuite Limited [2025] ATP 10, Virtus Health Limited [2022] ATP 5, Bullseye Mining Limited 03 [2022] ATP 4, AusNet Services Limited 01 [2021] ATP 9, Webcentral Group Limited 03 [2021] ATP 4, Keybridge Capital Limited 02 [2019] ATP 19, Finders Resources Limited 03R [2018] ATP 11, Flinders Mines Ltd [2012] ATP 9, BC Iron Limited [2011] ATP 6, MYOB Limited [2008] ATP 27, Summit Resources Limited [2007] ATP 9, Village Roadshow Limited 01 [2004] ATP 4, Richfield Group Limited [2003] ATP 41, BreakFree Limited 03 & BreakFree Limited 04 [2003] ATP 38 & ATP 39, AMP Shopping Centre Trust 02 [2003] ATP 24, Winepros Limited [2002] ATP 18, Ballarat Goldfields NL [2002] ATP 7, Pinnacle VRB Limited 11 [2001] ATP 23, Pinnacle VRB Ltd 08 [2001] ATP 17, Taipan Resources NL 06 [2000] ATP 15, St Barbara Mines Limited and Taipan Resources NL [2000] ATP 10, Email Limited 02 [2000] ATP 4*

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

## INTRODUCTION

1. The Panel, Yasmin Allen AM (sitting President), Michael Borsky KC and Richard Phillips, made a declaration of unacceptable circumstances in response to an application by Mayne Pharma in relation to its affairs. Cosette proposed to acquire Mayne Pharma via a scheme of arrangement. The application concerned Cosette's re-evaluation of its intentions in relation to Mayne Pharma's Australian manufacturing site, which put the prospects of receiving FIRB approval of the scheme at risk. Among other things, the Panel considered that Cosette's change of intentions meant that the market for control of Mayne Pharma was not proceeding in a manner generally expected for schemes and was contrary to an efficient, competitive and informed market. The Panel made orders requiring Cosette to agree to any conditions reasonably required by the Treasurer in connection with the manufacturing site (including conditions reasonably restraining its closure) that are not inconsistent with Cosette's prior intentions disclosure in the Scheme Booklet.

2. In these reasons, the following definitions apply.

<b>24 June Statement</b>	has the meaning given in paragraph 22
<b>Cosette</b>	Cosette Pharmaceuticals, Inc.
<b>FATA</b>	<i>Foreign Acquisitions and Takeovers Act 1975 (Cth)</i>
<b>FDA</b>	Food and Drug Administration
<b>FIRB</b>	Foreign Investment Review Board
<b>FIRB Approval</b>	has the meaning given in paragraph 5
<b>MAC</b>	has the meaning given in paragraph 5
<b>MAC Court Proceedings</b>	has the meaning given in paragraph 19(b)
<b>MAC Notice</b>	has the meaning given in paragraph 16
<b>Mayne Pharma or Mayne</b>	Mayne Pharma Group Limited
<b>Proposed Orders</b>	has the meaning given in paragraph 132
<b>Salisbury Site</b>	has the meaning given in paragraph 3
<b>Scheme</b>	has the meaning given in paragraph 5
<b>Scheme Booklet</b>	has the meaning given in paragraph 13
<b>SID</b>	has the meaning given in paragraph 5
<b>Termination Notice</b>	has the meaning given in paragraph 19(a)
<b>TGA</b>	Therapeutic Goods Administration
<b>TXMD</b>	TherapeuticsMD, Inc.

## FACTS

3. Mayne Pharma is an ASX-listed pharmaceuticals company (ASX: MYX). Its business is predominantly US-based. However, it also has a presence in Australia, including a manufacturing site in Salisbury, South Australia (the **Salisbury Site**), which employs in excess of 200 people. The Salisbury Site produces pharmaceutical products which are approved by the TGA in Australia and the FDA in the US.<sup>1</sup>

4. Cosette is the main operating entity of the Cosette group, a US-based pharmaceuticals group.<sup>2</sup>

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<sup>1</sup> Products manufactured at the Salisbury Site are sold and distributed in Australia and other parts of the world including the US, Canada and parts of Europe and Asia

<sup>2</sup> Cosette and Cosette Australia BidCo Pty Ltd are each wholly owned subsidiaries of Cosette Pharmaceuticals Holdings, Inc., which is jointly owned and controlled by Avista Capital Holdings LP and Hamilton Lane Advisors LLC

5. On 20 February 2025, Mayne Pharma entered into a scheme implementation deed (**SID**) with Cosette in relation to the acquisition by Cosette of all of the shares in Mayne Pharma for \$7.40 cash per share by way of scheme of arrangement (**Scheme**), subject to certain conditions precedent, including that no “Mayne Material Adverse Change”<sup>3</sup> (**MAC**) occurs and that Cosette receives the Treasurer’s approval<sup>4</sup> under the FATA (**FIRB Approval**).<sup>5</sup> The SID was originally subject to an “End Date” of 20 November 2025, unless extended by agreement between the parties.<sup>6</sup>
6. Cosette has obligations under the SID to use its “best endeavours” to secure FIRB Approval<sup>7</sup> and to not take any action or omit to take any action that would or would be reasonably likely to prevent or materially hinder the satisfaction of the FIRB Approval condition.<sup>8</sup>
7. On 25 February 2025, Cosette lodged an application with FIRB seeking FIRB Approval.
8. On 26 February 2025, Mayne Pharma announced its half year results for FY25, which disclosed (among other things) underlying EBITDA of \$31.0 million and that “[t]he Company expects to grow underlying EBITDA in 2HFY25 via revenue growth.”
9. On 4 April 2025, the TGA issued a letter to Mayne Pharma in relation to a surveillance inspection conducted at the Salisbury Site from 11 to 13 March 2025. The letter stated that there were “extensive and serious deficiencies in the site’s operations which require effective resolution due to the potential risks to product quality and patient safety” and listed a number of actions required by Mayne Pharma to address them. The letter requested that Mayne Pharma respond to the deficiencies within four weeks from the date of the letter.
10. On 11 April 2025, Mayne Pharma announced that it had been served with a legal proceeding brought by TXMD as the plaintiff filed against one of its US subsidiaries,

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<sup>3</sup> Being (other than certain excepted events) “[a]ny event, occurrence, change, circumstance or matter... which has, has had or is (either individually or when aggregated together with any such other events, occurrences, changes matters or circumstances) reasonably expected to have, the effect of diminishing the consolidated Maintainable EBITDA over a 12-month period of the Mayne Group, taken as a whole, by at least A\$10.76 million...”

<sup>4</sup> The Treasurer is the decision maker under Australia’s foreign investment framework. FIRB, Treasury and the Australian Taxation Office support the Treasurer to administer the foreign investment framework. For further information on foreign investment in Australia, see [here](#). For convenience and to reflect language used by the parties in their submissions, references to “FIRB” encompass the Treasurer and/or the Foreign Investment Division of Treasury (as the context requires)

<sup>5</sup> See clauses 3.1(g) and 3.1(a) of the SID, respectively

<sup>6</sup> Clause 3.7 of the SID provides that if the Scheme does not become “Effective” by the End Date (i.e. court orders lodged with ASIC by 20 November 2025), termination rights may arise under the SID, provided that the party terminating has not materially contributed to the relevant conditions not being satisfied by the End Date

<sup>7</sup> See clause 3.2(a)(i)

<sup>8</sup> See clause 3.3(a)(vii)

Mayne Pharma LLC, in the United States District Court for the District of Delaware. The announcement stated:

*“...The proceeding alleges breach of contract, breach of implied covenant of good faith and fair dealing, fraudulent inducement to settle a prior portion of the net working capital adjustment and unjust enrichment related to Mayne Pharma LLC’s calculation of amounts owed by TXMD for various net working capital adjustments under the Transaction Agreement entered into between TXMD and Mayne Pharma LLC on 4 December 2022 (Transaction Agreement).*

*These claims are related to one of a series of disputes that have been in discussion between Mayne Pharma and TXMD for some time. Mayne Pharma intends to vigorously defend the proceeding. Additionally, Mayne Pharma has a number of separate claims against TXMD that allege damages which Mayne Pharma believes are in excess of the value of the claims made by TXMD in this proceeding and will address those in due course. This proceeding is not an attempt to terminate the Transaction Agreement, the License Agreement entered into between TXMD and Mayne Pharma LLC on 4 December 2022, or Mayne Pharma’s rights with respect to the products licensed from TXMD.*

*Mayne Pharma emphatically denies any and all allegations of wrongdoing and believes the proceeding to be without merit, but there is no assurance that Mayne Pharma would be successful in any defence thereof.”*

11. On 22 April 2025, Mayne Pharma announced an earnings update which stated (among other things) that “[i]n FY25 Mayne Pharma anticipates underlying EBITDA in the range of \$47 million to \$51 million”.
12. On 14 May 2025, Mayne Pharma made an announcement in response to an ASX Price Query, noting (among other things) that “MYX is aware that on 12 May 2025 (US time) the [FDA] published on its website an ‘untitled letter’ received by Mayne Pharma on 28 April 2025 (US time) related to certain promotional claims used in a speaker presentation for NEXTSTELLIS®”. Later that day it released a further announcement stating (among other things) that “Mayne Pharma takes the views of the FDA seriously and will respond to the letter within the prescribed timeframe. Out of an abundance of caution, and as an initial and immediate action, Mayne Pharma voluntarily withdrew the speaker presentation referenced in the FDA Untitled Letter.”
13. On 15 May 2025, the first court hearing in relation to the Scheme occurred, at which both Mayne Pharma and Cosette appeared and at which orders were made approving the convening of the scheme meeting and approving distribution of the explanatory statement and related documents in relation to the Scheme (the **Scheme Booklet**). The Court received, among other evidence, an affidavit of a representative of Cosette verifying the information provided by Cosette in the Scheme Booklet.<sup>9</sup>

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<sup>9</sup> *In the matter of Mayne Pharma Group Limited [2025] NSWSC 513 (21 May 2025), 7*

14. Also on 15 May 2025, Mayne Pharma released the Scheme Booklet. The information provided by Cosette in the Scheme Booklet included the following statements in Section 8 in respect of Cosette's intentions:

- (a) *"If the Scheme is implemented, the Cosette Group's current intention is to continue the business and operations of Mayne Pharma largely in the same manner as it is currently operated and to investigate opportunities to integrate and grow Mayne Pharma's business (which may include further investment flowing to Mayne Pharma)."<sup>10</sup>*
- (b) *"Following implementation of the Scheme, the Cosette Group will review Mayne Pharma's business operations and organisational structure to ensure that the combined Mayne Pharma Group and Cosette Group has the appropriate mix and level of employees and skills to enhance the business going forward and enable it to pursue growth opportunities.*

*The Cosette Group's current intention is to retain Mayne Pharma's existing employees to the extent that it is commercially appropriate to do so."<sup>11</sup>*

- (c) *"The statements in this Section 8 (Information on Cosette and Cosette Group) regarding the Cosette Group's intentions are based on information concerning the Mayne Pharma Group and the general business environment which are known to the Cosette Group at the time of the preparation of this Scheme Booklet. After implementation of the Scheme, the Cosette Group may conduct a review of Mayne Pharma and its operations, assets, liabilities, structure and employees, following which it may, as required, review its intentions as set out in this Section. Final decisions regarding these matters will be made in light of all material information, facts and circumstances at the relevant time if the Scheme is implemented.*

*Accordingly, it is important to recognise that the statements set out in this Section 8 are statements of current intention only and may change as new information becomes available or circumstances change."<sup>12</sup>*

- (d) *"The Cosette Group refers to the announcements made by Mayne Pharma to ASX on 14 May 2025 as referred to in Section 7.10 [in relation to the FDA letter]. The matters described in these announcements remain under consideration by the Cosette Group as at the date of this Scheme Booklet, including in relation to the impact of these matters on Mayne Pharma and its business and operations."<sup>13</sup>*
- (e) *"Other than as disclosed in this Section 8 (Information on Cosette and Cosette Group), there is no information regarding the Cosette Group or its intentions regarding Mayne Pharma, that is material to the making of a decision by a Mayne Pharma Shareholder on whether or not to vote in favour of the Scheme that is within the knowledge of any director of Cosette or Cosette Sub as at the date of this Scheme Booklet that has not been previously disclosed to Mayne Pharma Shareholders."<sup>14</sup>*

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<sup>10</sup> At Section 8.3(b)

<sup>11</sup> At Section 8.3(d)

<sup>12</sup> At Section 8.3(a)

<sup>13</sup> At Section 8.4(f)

<sup>14</sup> At Section 8.4(f)

15. Cosette's FIRB application included substantially similar disclosure in relation to Cosette's intentions as set out in paragraph 14.
16. On 17 May 2025, Cosette served a notice on Mayne Pharma asserting that a MAC had occurred based upon Mayne Pharma's trading performance including the circumstances associated with the Mayne Pharma 22 April 2025 earnings update, the previously disclosed litigation with TXMD, and certain correspondence with regulators including the FDA Untitled Letter disclosed to the ASX on 14 May 2025 (**MAC Notice**).<sup>15</sup>
17. On 2 June 2025, Mayne Pharma announced that Mayne Pharma LLC had filed a complaint in the United States District Court for the District of Delaware against TXMD related to the TXMD litigation announced on 11 April 2025. The announcement stated (among other things):

*"Mayne Pharma's complaint asserts claims against TXMD for breach of contract and fraud based on allegations that TXMD concealed information about certain commercialisation assets it sold to Mayne Pharma on 4 December 2022. Mayne Pharma is seeking more than US\$11.5 million in damages it incurred as a result of TXMD's alleged misrepresentations about the assets.*

*In addition to filing a complaint against TXMD, Mayne Pharma has filed a motion to dismiss TXMD's proceeding in its entirety."*
18. On 4 June 2025, Mayne Pharma announced that it had now received a "close-out letter" from the FDA in relation to the FDA letter announced on 14 May 2025, and that the close-out letter *"confirms that based on the FDA's evaluation, Mayne Pharma has addressed the issues identified in the Untitled Letter"*.
19. Also on 4 June 2025:
  - (a) Cosette issued a purported termination notice to Mayne Pharma on the basis that the MAC was triggered (**Termination Notice**) and
  - (b) Mayne Pharma commenced proceedings in the Supreme Court of New South Wales seeking orders that the MAC Notice was not validly issued and Cosette had not validly terminated the SID by the Termination Notice (**MAC Court Proceedings**).<sup>16</sup>
20. On 5 June 2025, Mayne Pharma released a supplementary scheme booklet containing disclosure in relation to (among other things) the MAC Court Proceedings.

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<sup>15</sup> The MAC Notice also stated that the parties were required under clause 3.7(a) of the SID to consult in good faith for a period of 10 business days with a view to determining whether, among other things, the Scheme may proceed by way of alternative strategy means or method and if no agreement was reached the SID could be terminated in accordance with clause 3.7(b)

<sup>16</sup> Cosette subsequently issued further termination notices upon Mayne Pharma, including alleging that Mayne Pharma had breached its continuous disclosure obligations and that Mayne Pharma had misled Cosette into entering into the SID, which were also the subject of the MAC Court Proceedings

21. On 18 June 2025, Mayne Pharma shareholders voted in favour of the Scheme at the scheme meeting.<sup>17</sup>
22. On 24 June 2025, Cosette sent the following communication to FIRB (**24 June Statement**). Cosette provided Mayne Pharma with a copy of this communication later that day.

*"As you may be aware, Cosette has served two notices on Mayne Pharma to terminate the scheme implementation deed (SID) between Cosette and Mayne on the basis of: (1) a material adverse change to Mayne's business and (2) a breach of Mayne's representations and warranties under the SID between the parties. The parties are currently in a dispute before the Courts with respect to these termination notices. However, notwithstanding these termination notices, Cosette has agreed that it will continue to progress the FIRB application on a "without-admissions" basis.*

...

*Cosette wishes to inform FIRB that in light of these recent developments, if Cosette is ultimately legally compelled to acquire Mayne, its intentions in relation to Mayne's business will be different to those originally disclosed in Cosette's FIRB application.*

...

*Cosette has re-evaluated its intentions concerning Mayne's business in Australia, specifically with respect to Mayne Pharma's manufacturing site in South Salisbury (Adelaide Site). Following this re-evaluation, Cosette has determined that if Cosette is required by the Court to proceed with the Scheme, its current intention is to seek to dispose of or close the Adelaide Site."*

23. On 26 June 2025, FIRB sent a response to Cosette acknowledging receipt of the 24 June Statement and stating (among other things) that it would need to reconsult with the consult partners in relation to Cosette's FIRB application.
24. On 8 September 2025, following media reports that South Australia's Premier had intervened in the FIRB process, Mayne Pharma announced (among other things) the following:

*"Mayne Pharma is aware that, since Cosette's purported termination of the Scheme, Cosette has had some correspondence with FIRB in respect of its intentions for the Mayne Pharma business (including possible intentions to either close or sell the*

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<sup>17</sup> 99.06% of votes cast and 89.64% of shareholders voting were in favour of the Scheme

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*Salisbury site) following implementation of the Scheme, should Cosette's attempts to terminate, or otherwise get out of its obligations under, the SID, fail."*

25. On 15 October 2025, judgment was delivered by Justice Black in the MAC Court Proceedings to the effect that no MAC had occurred, the termination notices were invalid and the SID remained valid and on foot.<sup>18</sup>
26. On 30 October 2025, the Treasurer sent a letter to Cosette stating (among other things):

*"On 24 June 2025, Treasury was advised that Cosette had re-evaluated its intentions concerning the Target's business in Australia and determined that if the Investors were to acquire the Target, its current intention is to seek to dispose of, or close, the Target's manufacturing site in Adelaide (the Adelaide Site).*

*I appreciate the time and effort that Cosette has provided in engaging with Treasury on this notice. However, it is my preliminary view that the Proposed Acquisition would be contrary to the national interest, on the grounds that it would negatively impact the Australian economy and community. The Adelaide Site is an important part of Australia's pharmaceutical manufacturing and research and development capabilities. It produces experimental drugs for clinical trials and medicines that are listed on the Pharmaceutical Benefits Scheme for which there are limited alternative supplies.*

*I am therefore considering whether I should make orders prohibiting the Investors from making the Proposed Acquisition under section 67 of the FATA, on the basis that it would be contrary to the national interest.*

*As my preliminary view may affect Cosette's business, before I make a final decision on whether to make an order under section 67 of the FATA, I am providing you with an opportunity to respond to my concerns... by 5pm within three weeks from the date of this letter."<sup>19</sup>*

27. Also on 30 October 2025, FIRB requested that Cosette voluntarily extend the statutory deadline from 7 November 2025 to 1 December 2025.
28. On 31 October 2025, Mayne Pharma announced the receipt of the letter from the Treasurer to Cosette dated 30 October 2025.
29. On 4 November 2025, Cosette provided a submission via letter to FIRB stating:

*"[I]t was not within Cosette's expectations that the Treasurer would adopt a preliminary position prohibiting the Proposed Acquisition. In particular, Cosette did not anticipate that Mayne's manufacturing site in Adelaide (Adelaide Site) was of such*

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<sup>18</sup> *In the matter of Mayne Pharma Group Ltd [2025] NSWSC 1204.* Paragraph 274 of the judgment provided: "There is, in my view, a fundamental conceptual difficulty with a claim by reference to changes in MPG's forecasts, namely that the material adverse change in EBITDA contemplated by the SID is a change in MPG's **actual** position, between two points in time in a 12 month period, not a change between a forecast and an actual position. As Mr Hutley points out, an attempt to establish an MMAC by comparing forecast results with actual results would defeat the disclaimer in respect of the forecast, in a manner that is not available on the proper construction of the SID or in such provisions generally."

<sup>19</sup> Being 20 November 2025

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*significance that the disposal or closure of the Adelaide Site would be of national interest.*

...

*Cosette has not yet determined whether it will dispose of or close the Adelaide Site. Following any implementation of the Proposed Acquisition, Cosette intends to undertake a detailed review and market test of the Adelaide Site's operations to determine the most appropriate course of action, having regard to operational efficiency, market conditions, and the long-term strategic objectives of the combined Mayne and Cosette business.*

*Cosette's assessment as to whether to close the site or dispose of it to a third party will include weighing up the costs of closure against the current operations of the Adelaide Site and the ability to realise the value of individual assets (to offset the costs) versus the purchase price that it achieves in a timely fashion if there is a third party buyer in whole or in parts of the Australian business.*

...

*Given the commercial imperative to resolve the outcome of the transaction promptly, Cosette is unable to voluntarily extend the statutory deadline beyond 7 November 2025, and respectfully requests that a final decision is made as soon as possible and in any event by no later than 7 November 2025."*

30. On 4 November 2025, FIRB sent a response to Cosette including as follows:

*"It is our assessment that the assertion 'Cosette has not yet determined whether it will dispose of or close the Adelaide Site' represents a clear departure from the position represented to Treasury on 25 July:*

*If Cosette is ultimately required to acquire Mayne Pharma, it does not currently have any plans to continue Mayne Pharma's operations in Australia and intends to either dispose of or close the Salisbury Site as soon as practicable after implementation...*

...

*Given the substantial change in Cosette's position, Treasury will require additional time to consult with the relevant government agencies regarding the implications for Australia's national interest to provide updated advice to the Treasurer.*

*I note your request for a decision by 7 November 2025. Given the change in position, it will not be possible to meet this deadline. Noting Mayne Pharma's ASX Announcement on 4 November 2025 that the End Date under the Scheme Implementation Deed is 20 November 2025, we can give no guarantee a final decision will be made by that date."*

31. On 5 November 2025, Cosette sent a response to FIRB including as follows:

*"We respectfully submit and confirm that this statement in the Submissions was not intended to depart from Cosette's previously stated position. Rather, the statement in the Submissions was intended to clarify that Cosette has not yet made a final decision between the two options – namely to dispose of or close the Adelaide Site. Cosette's*

*present intention remains to dispose of or close the Adelaide Site as soon as practicable following any implementation of the Proposed Acquisition.*

...

*In light of the clarification above, and given the commercial imperative to resolve the outcome of the transaction promptly, Cosette respectfully requests that a final decision be made as soon as possible, and in any event no later than 7 November 2025."*

## APPLICATION

### Declaration sought

32. By application dated 6 November 2025, Mayne Pharma sought a declaration of unacceptable circumstances. Mayne Pharma submitted (among other things) that:

- (a) Cosette's alleged change of intentions in relation to the Salisbury Site is contrary to the intentions disclosed in the Scheme Booklet which were verified and put before the Court only weeks before, and no new material information has arisen since release of the Scheme Booklet that is relevant to such alleged intentions, save that Cosette had sought to terminate the SID.
- (b) It would be "commercially irrational" to close the Salisbury Site, noting that it has recently been the subject of significant investment in upgrades, all of which Cosette was informed of in detail in its due diligence.
- (c) Prior to the 24 June Statement, detailed conditions to FIRB Approval had been negotiated between FIRB and Cosette and there was "*no indication (based on correspondence seen by Mayne) that FIRB or the Treasurer harboured any concerns in relation to the transaction*".
- (d) The Treasurer's 30 October 2025 letter does not point to any basis other than the 24 June Statement for the preliminary view to block the transaction and the "overwhelming inference" is that the Treasurer's preliminary view that the Scheme would be contrary to the national interest has been brought about by Cosette's 24 June Statement.
- (e) "*In the context of [clauses 3.2(a)(i) and 3.3(a)(vii) of the SID*<sup>20</sup>*], Cosette's profile (as a North American based strategic investor) and the nature of the target business, the market was entitled to assume that the prospects of obtaining FIRB Approval for the transaction, while not guaranteed, were very good.*"
- (f) "*Mayne has, since 24 June 2025, done all it can to procure that Cosette take actions to remedy its breach of the SID, including requesting that Cosette clarify to FIRB that its use of the word "close" does not mean to simply shut down the Salisbury Site (as it would be commercially irrational to do so). Cosette has at all times refused to do so in any adequate manner and has refused to allow Mayne to engage with FIRB or the Treasurer to explain matters from its perspective, including the commercial viability of the Salisbury Site as a going concern. In the face of such submissions, it is difficult to*

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<sup>20</sup> See paragraph 6

*see how the Treasurer can carefully consider the 'national interest' implications of the transaction proceeding on a fully informed basis."*

- (g) *"The effect of Cosette's notice of change of alleged intention and opaque communications with FIRB and the Treasurer regarding the Salisbury Site is to seek to defeat the transaction."*
- (h) *"Cosette is leveraging knowledge of the likely discomfort FIRB has with the notion of job losses and loss of manufacturing capability in Australia, to seek to cause the FIRB Approval condition to fail, having exhausted other avenues to avoid completing the transaction."*
- (i) The circumstances are contrary to an efficient, competitive and informed market for the control of Mayne Pharma, the reasonable and equal opportunity of Mayne Pharma shareholders to participate in the benefits of the Scheme, and the 'truth in takeovers' principle.

33. Mayne Pharma also referred in its application to Rule 19.6 of the UK Takeover Code<sup>21</sup>, which it submitted provides a useful reference point.

#### **Interim orders sought**

34. Mayne Pharma sought interim orders to the effect that:

- (a) Cosette confirm to the Panel that it will meet with FIRB (together with Mayne Pharma)
- (b) Cosette seek feedback from the Treasurer as to what undertaking from Cosette or condition in relation to the Salisbury Site would be required to approve the Scheme
- (c) Cosette agree to extend the statutory deadline for a decision in relation to its FIRB application (from 7 November 2025) to a date that allows FIRB time to make a decision and
- (d) (if required to allow the Panel or FIRB time to make a decision) the End Date under the SID be extended.

#### **Final orders sought**

35. Mayne Pharma sought final orders as follows:

- (a) Cosette agrees to *"any conditions reasonably required by the Treasurer in connection with the Salisbury Site (including conditions reasonably restraining its closure) that are not inconsistent with Cosette's prior intentions disclosure in the Scheme Booklet"*
- (b) Cosette agree to extend the statutory deadline for a decision in relation to its FIRB application to 1 December 2025 (or such other date reasonably required by FIRB) and

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<sup>21</sup> Pursuant to which a bidder's disclosures about its intentions for the target business must be accurate and made on reasonable grounds, and if there is a change to those intentions within 12 months following the transaction, it must consult the UK Panel before it takes that action and make appropriate disclosure of its new intentions

- (c) the End Date under the SID be extended to 19 December 2025 or such other date the Panel considers necessary to enable the matters before it to be determined, to give the transaction the best prospects of proceeding and for an orderly market to be maintained.

## DISCUSSION

36. Except as noted below, 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.

### Protected information

37. Upon receiving the application, the Panel executive took a cautious approach regarding information contained in the application and its annexures that may be 'protected information' within the meaning of section 120 of the FATA. It asked the parties some preliminary questions before any information was shared with the substantive Acting President (who is also the sitting President) or with us.
38. While Mayne Pharma and Cosette had differing views on whether any of the information was 'protected information', to the extent the information includes 'protected information' and "*in the interests of transparency and resolving the matters in issue*", Cosette agreed to consent to the disclosure of such information (for the purposes of section 126(1) of the FATA) to the Acting President and the sitting Panel on certain terms. These terms included prior notification to FIRB of Cosette's proposed consent, which was later confirmed by Cosette.
39. The Panel executive acknowledged Cosette's consent to the disclosure of all 'protected information' in the application and its annexures being provided to us on the terms communicated in correspondence between the parties. We proceeded on the basis that consent "*has been and will be taken to extend to all further materials the parties give to the Panel executive during the course of this proceeding unless a party expressly states otherwise (including an explanation as to why consent is being withheld in relation to that material)*".

### Interim orders and decision to conduct proceedings

40. On the day the application was lodged, the Panel executive were informed by Mayne Pharma's solicitors that FIRB had unilaterally extended the statutory deadline to provide a decision from 7 November to 14 November 2025. Accordingly, the Panel executive asked Mayne Pharma to advise whether the interim orders requested require urgent consideration by the President prior to a sitting Panel being appointed. On 7 November 2025 at approximately 11.54am, Mayne Pharma responded advising that Mayne Pharma, Cosette and FIRB were meeting at 1.00pm that day and that the second interim order sought (see paragraph 34(b)) required urgent consideration by the substantive Acting President for the purposes of that meeting.

41. The Acting President considered<sup>22</sup> the request for the second interim order prior to the parties' meeting with FIRB and was not minded to make that order by 1.00pm as requested, noting the obligation under clause 3.2(a)(i) of the SID for Cosette to use its best endeavours to secure FIRB Approval. This was communicated to the parties ahead of the meeting. Parties were then invited later that day to make submissions regarding whether the interim order should be made including whether Cosette would be prepared to provide an undertaking to the Panel to the same effect. Based on feedback from Cosette regarding the meeting with FIRB, Mayne Pharma advised that the second interim order was no longer necessary.
42. On 11 November 2025, Mayne Pharma made a further request for interim orders that the End Date be extended until 19 December 2025 “*to give FIRB adequate time to consider the information put before it, and so that it does not feel that it is required to make a premature decision*” and that Cosette be required to immediately communicate any extension of the End Date to FIRB. Mayne Pharma submitted that the interim orders were required as a matter of urgency so that FIRB was aware of the extension of the End Date before it makes a decision. As part of this request Mayne Pharma informed us that during the meeting between the parties and FIRB on 7 November 2025, FIRB had clarified that its “*primary national interest concern is in relation to the ongoing availability of essential medicines produced at the Salisbury Site which are listed under the government's Pharmaceutical Benefits Scheme*” and sought further information from Cosette on that point. Mayne Pharma also submitted that there was a material disagreement between the parties as to the extent of the further information Mayne Pharma considers relevant to FIRB's decision and that there is a “*real risk that FIRB will have little choice but to finalise its decision based only on the information before it, provided by Cosette, before the current End Date of 20 November 2025... without the appropriate time to properly consider and consult on the latest information...*”. We were also informed that Cosette had lodged an intention to appeal the MAC Court Proceedings.
43. Also on 11 November 2025 and shortly before our first meeting to discuss the matter that evening, we received from Cosette a combined preliminary submission and submission in response to Mayne Pharma's further request for interim orders. Cosette submitted (among other things) that:
  - (a) the Panel should be reluctant to intervene in what is in essence a contractual dispute; arguments regarding breach of the SID, conditions precedent or other contractual obligations should be dealt with by a court
  - (b) its update to its intentions “*arose from its later discovery and assessment of a significant deterioration to Mayne's financial position and operations that naturally impacted Cosette's post-implementation integration strategy for the merged business*” and the key developments that caused Cosette to reassess its strategy included:

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<sup>22</sup> The Acting President's consideration of interim orders was made on the basis of the Panel's media release of receipt of the application and publicly available information only (pending submissions on the potential confidentiality of information)

- (i) *“the continuing financial underperformance of Mayne’s business, including the announcement on 22 April 2025 of a material earnings downgrade (of up to 52% for H2 FY2025)”*
- (ii) *“the material deficiencies identified by the [TGA] following its inspection of the Salisbury Facility and which inspections have been ongoing” and*
- (iii) *“the FDA comments announced by Mayne to ASX on 14 May 2025 and that resulted in Mayne’s share price falling by as much as 16% on intra-day trading and Mayne withdrawing key promotional material used for one of its most lucrative pharmaceutical products”*

(c) there is no legal principle that prevents a bidder from updating its present intentions for the target business following a bona fide commercial reassessment

(d) Rule 19.6 of the UK Code does not prohibit updates to a bidder’s intentions prior to implementation and in any event, the position in the UK does not apply and the Panel should not have regard to the matters raised regarding it

(e) there is no reasonable prospect for a finding of unacceptable circumstances, as the application has not demonstrated any adverse impact on market integrity<sup>23</sup>

(f) Mayne Pharma has unreasonably delayed making its application until more than 4 months after first becoming aware of Cosette’s update of intention and

(g) an extension to the End Date to 19 December 2025 *“has the potential to cause the debt financing to no longer be available and cause other significant financial and commercial prejudice to Cosette”* and would represent an unprecedented intervention by the Panel.

44. We were concerned by the complaints set out in the application, particularly in light of Cosette’s previous attempts to not proceed with the transaction as evident in the MAC Court Proceedings, which received considerable coverage in the press and discussion in M&A circles. Against this backdrop, we considered that the application raised a serious public policy issue which warranted further investigation, namely the potential misuse of a regulatory process to get out of a deal.

45. Cosette submitted that the Panel has consistently stated that it is generally reluctant to conduct proceedings in connection with a scheme of arrangement if a court has commenced scrutiny of the scheme,<sup>24</sup> and observed that the first court hearing had already occurred and that the same judge had considered contractual disputes regarding the SID.

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<sup>23</sup> In this regard, Cosette submitted that the market has since been trading for a material time (i.e. more than 2 months) based on Cosette’s updated intentions as set out in Mayne Pharma’s ASX announcement on 8 September 2025

<sup>24</sup> With reference to *St Barbara Mines Limited and Taipan Resources NL* [2000] ATP 10

46. Although the Scheme was at its latter stages by the time this matter came to us, the issues raised in the application are unique and go to the underlying policy of Chapter 6.<sup>25</sup>
47. We also consider that the matters in the application are distinct from the matters before the Court in the MAC Court Proceedings,<sup>26</sup> which in essence concerned the interpretation of provisions in the SID, particularly those relating to a MAC. Cosette acknowledged that "*these specific circumstances are not yet the subject of court proceedings*" but submitted that the application is a dispute about compliance with the SID and that a court is better placed than the Panel to hear the matter. We did not agree with Cosette's characterisation of the dispute; rather, as noted above, we view the complaint set out in the application as a question of whether the circumstances are contrary to section 602 or otherwise unacceptable.
48. We also noted Mayne Pharma's submission that it did not consider there is any other forum that is equipped to adequately consider this matter in the time available and that "*it would be too late and a highly unsatisfactory outcome if the only resolution to this matter were by way of post-mortem damages proceedings.*"
49. To adopt, with respect, the language of Justice Goldberg in *Tower Software Engineering Pty Limited; Pendant Software Pty Limited v Harwood*, we did not consider that us hearing this matter would amount to "*assuming the task of the Court*"; instead we viewed the application as a "*separate and independent basis for a challenge*".<sup>27</sup> Indeed, Mayne Pharma sought to invoke the Panel's processes not to prevent but so as to *enable* an application being made to the Court for approval of the Scheme. Moreover, we saw this as a matter in which the Panel's functions may complement rather than interfere with those of the Court.<sup>28</sup> The lodging of the notice of intention to appeal the MAC Court Proceedings did not alter our views on this. We considered we had jurisdiction to consider the application.
50. We initially questioned the utility of us hearing this matter noting there was very limited time available (9 days) in which to conduct proceedings before the End Date was reached. We also did not have any visibility over the status of the FIRB Approval process (being reliant on updates from the parties);<sup>29</sup> while it appeared that a final decision from the Treasurer was close, we did not know whether there would

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<sup>25</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)

<sup>26</sup> See *Richfield Group Limited* [2003] ATP 41 at [9]

<sup>27</sup> [2006] FCA 717 at [44]. See also *PM Capital Asian Opportunities Fund Limited, in the matter of PM Capital Asian Opportunities Fund Limited* [2021] FCA 1380 at [76] and [93]

<sup>28</sup> See *St Barbara Mines Limited and Taipan Resources NL* [2000] ATP 10 at [34]. See also *Village Roadshow Limited 01* [2004] ATP 4 at [85]-[88]

<sup>29</sup> It is noted that while the Takeovers Panel executive and Foreign Investment Division are both part of Treasury, the Takeovers Panel (which consists of such members as hold office in accordance with Part 10 of the *Australian Securities and Investments Commission Act 2001* (Cth)) and FIRB are separate regulatory bodies each with strict arrangements in relation to confidentiality of information. Accordingly, there is limited scope for the exchange of information between them. Except as stated in these reasons, the Panel did not communicate with FIRB in relation to this proceeding

be a further extension of FIRB's statutory deadline beyond 14 November 2025 before the final decision.

51. Accordingly, we sought responses from the Foreign Investment Division of Treasury<sup>30</sup> on the following questions noting that we proposed to share the responses received with the parties:
  - (a) whether an extension of the End Date under the SID until 19 December 2025 would assist the Treasurer in reaching his decision in relation to the Scheme and
  - (b) whether there are any hindrances or obstacles (other than the End Date) to a further extension of the statutory deadline for the Treasurer's decision in relation to the Scheme beyond 14 November 2025.
52. We received the following from the Foreign Investment Division in response:
  - (a) *"As these are parallel regulatory processes being determined independently, a decision on whether to extend the End Date under the Scheme Implementation Deed is a matter for the Takeover Panel [sic]. Our timing can accommodate the Takeovers Panel process should you decide to proceed."*
  - (b) *"While the Foreign Investment Division will endeavour to secure a decision within the statutory deadline, the Treasurer has the power to unilaterally extend the statutory deadline if necessary, including beyond 14 November 2025."*
53. We were subsequently informed that there had been a further extension of the statutory deadline to 17 November 2025, that FIRB had given Mayne Pharma and Cosette additional time to make final submissions to FIRB, and that Mayne Pharma would provide its submission directly to FIRB.<sup>31</sup>
54. At this point we decided to conduct proceedings and informed the parties of this. We also advised that we were minded to make interim orders extending the End Date to 10 December 2025, noting Cosette's preliminary submission above that an extension to 19 December 2025 would impact its debt financing. We sought further submissions from the parties on the proposed interim orders, including requesting further details and evidence from Cosette regarding its debt financing to support its preliminary submission.<sup>32</sup>
55. Cosette submitted (among other things) that:
  - (a) its debt financing commitments expire on 28 November 2025

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<sup>30</sup> Being the relevant division of Treasury that supports the Treasurer to administer the foreign investment framework

<sup>31</sup> Mayne Pharma submitted that it had not to date been given an opportunity to provide any submissions to FIRB despite seeking Cosette's consent on numerous occasions to engage with FIRB directly. Cosette contested this submission

<sup>32</sup> We informed the parties that we intended to provide a copy of this communication to the Foreign Investment Division for information, and we did so on 13 November 2025

- (b) “[u]nder the financing documents, Cosette has to provide an irrevocable borrowing notice 3 business days in advance of funding (ie by 24 November 2025 because 27 November 2025 is a non-business day in the US)”
- (c) “[a]ny extension of the End Date is subject to the consent of [its] lenders, and the process required for such an extension should be expected to include revisiting and refreshing due diligence on Mayne (having regard to the changes in financial position) and obtaining again relevant credit approvals which would be expected to have an adverse impact on the fees and interest rates payable by Cosette (effectively a repricing of the debt), if the debt were to be available at all” and
- (d) “[i]f the Proposed Interim Orders are made, which delays FIRB’s decision and results in the scheme not becoming effective by 24 November 2025, there will be no debt financing available to complete the transaction. Cosette will not be able to complete the transaction even if it is approved by FIRB.”

56. Mayne Pharma made a submission to the effect that Cosette had provided material new information in relation to Cosette’s funding which had not previously been provided to Mayne Pharma or FIRB, and that in light of this Mayne Pharma would agree to an interim order extending the End Date to 24 November 2025 in the first instance, noting that further interim orders may become appropriate.

57. We were concerned to ensure, to the extent possible, that any interim order we made preserved the ability for the transaction to be consummated. Based on Cosette’s submission, it did not appear that an extension to 24 November 2025 (instead of 10 December 2025) would give rise to the submitted issues regarding debt financing. For the avoidance of doubt, we gave the parties a further opportunity to make submissions. Cosette confirmed that an extension to 24 November 2025 would not cause the same prejudice as an extension to 10 December 2025 (but noted that as a matter of principle it did not support any amendment to the End Date for the reasons given in previous submissions).

58. The Panel considers that its power to make orders includes power to make an order that affects property interests or existing legal rights and obligations,<sup>33</sup> and that the Panel can make any order as an interim order that it can make as a final order.<sup>34</sup>

59. While it may be uncommon for the Panel to make orders modifying contractual rights, it has done so on a number of occasions and has fashioned the orders in a variety of ways. For example, in *Ballarat Goldfields NL*<sup>35</sup> the Panel ordered that the completion date under an asset sale agreement (the “Rexadis Conditional Agreement”) be extended by 7 days. The Panel described this order (at [58]) as an “ancillary order” necessary to ensure that the delay caused by postponements of shareholder meetings (which had also been ordered by the Panel) “does not adversely affect the Rexadis Conditional Agreement and to preserve the effect of that agreement as far as

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<sup>33</sup> See *Guidance Note 4: Remedies General* at [15(b)], citing *AMP Shopping Centre Trust 02* [2003] ATP 24 at [38]-[41] and *Pinnacle VRB Limited 11* [2001] ATP 23, respectively

<sup>34</sup> See section 657E(1); *Guidance Note 4: Remedies General* at [11]

<sup>35</sup> [2002] ATP 7

*practical in light of [the Panel's] decision.*" In *BC Iron Limited*,<sup>36</sup> the Panel ordered that a bidder could not rely on a termination right under a scheme implementation agreement which had not been disclosed in the announcement which summarised the key terms of the agreement. More recently in *AusNet Services Limited 01*<sup>37</sup> and *Virtus Health Limited*<sup>38</sup>, where the Panel considered unacceptable deal protection arrangements, it made orders including that certain terms of the agreements in question be of no force and effect unless they are amended in the manner stipulated by the Panel.

60. Cosette drew our attention to *Flinders Mines Ltd*<sup>39</sup>, where the Panel also considered a request for an interim order extending the end date under a scheme implementation agreement and declined to make that order stating that it was "*reluctant to interfere with contractual rights that have been agreed at arm's length, disclosed and considered by the Federal Court as part of the scheme process*" and that the Panel is "*generally reluctant to change the terms of a contract disclosed to the market.*"
61. The application in *Flinders Mines Ltd*, made by a Flinders Mines Ltd shareholder, concerned the effect that an injunction granted by a Russian court against the bidder had on preventing the Flinders Mines Ltd scheme of arrangement from proceeding to court approval after shareholders had approved it. The injunction (which triggered the 'no restraint' condition under the scheme) was brought by a shareholder of the bidder and challenged the legitimacy of the bidder's board resolutions relating to its proposed acquisition of Flinders Mines Ltd. The bidder made a request to discharge the injunction which was denied, and subsequently filed an appeal against the injunction. The final hearing of the Russian court proceeding was scheduled for 2 July 2012 and the end date for the transaction was 30 June 2012. The Panel, in refusing to make the interim order, noted that the end date and its effect had been disclosed to the market. It also observed that in any event, there was no certainty that extending the end date would be effective and that the proceedings may not be completed on 2 July 2012.<sup>40</sup> The Panel ultimately declined to conduct proceedings, citing (among other things) a lack of evidence that the shareholder of the bidder and bidder were associates or evidence of any relationship between them which would suggest collusion.<sup>41</sup>
62. While there are some similarities between *Flinders Mines Ltd* and the present case, we consider that it is also distinguishable, principally on the basis that the Panel in *Flinders Mines Ltd* did not consider that there was any reasonable prospect that it would make a declaration and therefore no interim order was required, but also because of the lack of evidence of the bidder's involvement in applying for the injunction and the target's opposition to the Panel making interim orders extending

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<sup>36</sup> [2011] ATP 6

<sup>37</sup> [2021] ATP 9

<sup>38</sup> [2022] ATP 5

<sup>39</sup> [2012] ATP 9 at [38]

<sup>40</sup> [2012] ATP 9 at [39]-[40]

<sup>41</sup> [2012] ATP 9 at [30]

the end date.<sup>42</sup> Accordingly, while we acknowledge the observations of the Panel in *Flinders Mines Ltd*, we consider that that matter has a limited bearing on our decision whether to make interim orders in this case (and on our decision more broadly).<sup>43</sup>

63. We did not take the question of whether to make an interim order extending the End Date lightly. We considered a 4-day extension to 24 November 2025 would give us sufficient time (albeit still very limited time) to conduct proceedings without causing unfair prejudice to Cosette, noting Cosette's submissions above concerning its debt financing. We were also mindful of Mayne Pharma's submissions regarding the risk of a "premature decision" by FIRB, and we considered that such an order protects the rights and interests of Mayne Pharma shareholders,<sup>44</sup> including by giving FIRB a further opportunity to consider new information such as the submissions given by Mayne Pharma directly to FIRB. In addition, and noting that it was still open to FIRB to finalise its decision at any time, we considered that extending the End Date may help ensure our power to make any final orders was not forestalled by intervening events.<sup>45</sup>
64. Accordingly, we decided to finalise our interim orders extending the End Date to 24 November 2025<sup>46</sup> and communicated in our media release that we had decided to conduct proceedings.<sup>47</sup>

#### **Cosette's change of intentions in relation to the Salisbury Site**

65. We asked Cosette when it first formed an intention to dispose of or close the Salisbury Site, what caused it to form that intention and for it to provide further details (including a timeline) and evidence to support its preliminary submissions on this point.<sup>48</sup> Cosette provided a detailed submission and timeline in response as well as various annexures including correspondence between the parties and other underlying materials. We set out below some of its submissions:
  - (a) Cosette first formed an intention to dispose of or close the Salisbury Site on 23 June 2025 at a meeting of the board of directors of Cosette, where it was "*determined that it was in Cosette's best interests to discontinue ownership of the Australian operations after implementation*".
  - (b) The factors relevant to Cosette's update to its intentions "*included the matters contained in its termination notice to Mayne*" as well as a number of other factors including:

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<sup>42</sup> [2012] ATP 9 at [35]

<sup>43</sup> Further to paragraphs 45 to 49 above, we note that while the Panel declined to conduct proceedings in *Flinders Mines Ltd*, the reasons did not refer to any objections to the Panel's jurisdiction to consider the matter

<sup>44</sup> See section 657D(2)

<sup>45</sup> See *Guidance Note 4: Remedies* at [10]

<sup>46</sup> For the avoidance of doubt, we also made an interim order restraining Cosette from taking any steps to terminate the SID on the basis that the End Date has lapsed

<sup>47</sup> We provided a copy of this media release to the Foreign Investment Division for information on 14 November 2025

<sup>48</sup> See paragraph 43(b)

- (i) the fact that the Australian operations were declining, loss making and *“not material to Mayne’s overall operations and significantly less material in the context of the combined business”*
- (ii) the required remediation by the TGA in respect of the operations of the Salisbury Site of which Cosette only became aware on 15 April 2025, and which the Cosette Board reasonably expected to increase operational costs at the Salisbury Site<sup>49</sup>
- (iii) the impact of material deficiencies identified by the FDA in relation to marketing materials for Mayne Pharma’s ‘NEXTSTELLIS’ product and the FDA comments announced by Mayne Pharma to ASX on 14 May 2025 that resulted in Mayne Pharma withdrawing key promotional material used for one of its most lucrative pharmaceutical products and the ongoing impact of this on the future marketing of Mayne Pharma’s products and
- (iv) the impact of the litigation commenced against Mayne Pharma by TXMD on 8 April 2025 and the impact of the litigation commenced against TXMD by Mayne Pharma LLC on 2 June 2025.

(c) The material deterioration in Mayne Pharma’s FY25 financial performance represents a *“\$22.8 million (or 33%) decline in underlying EBITDA... when compared to the bottom end of the range announced by Mayne on 22 April 2025”* and a *“\$18.8 million (or 27%) decline in underlying EBITDA... when compared to the top end of the range announced by Mayne on 22 April 2025.”*<sup>50</sup>

(d) Cosette considered the TGA report to be very concerning, particularly in relation to *“the potential for product to product cross-contamination and the indication of escalation within TGA”*. Cosette considered that Mayne Pharma would incur significant unplanned costs and expenses during FY25 and beyond to remediate the deficiencies identified in the TGA letter (which Cosette considered to be of a serious nature) and ensure continued compliance with TGA regulations. This development caused Cosette to also *“re-examine its views on the quality of the Salisbury Site and its operations and the significant investment that Cosette would be required to make to address potential regulatory exposure and to lift the standard of the Salisbury Site to a level commensurate with Cosette’s other operations”*.

(e) Cosette considered the FDA letter and its impact to be a serious and material development with respect to Mayne Pharma’s business, including because of concerns in relation to (among other things) *“material increases to costs and expenditures associated with updating the promotional materials”*, the *“impact on the growth of NEXTSTELLIS”*, and the *“decline in the trust and confidence of consumers in Mayne’s practices and products”*.

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<sup>49</sup> Cosette submitted that it considered the identified deficiencies to be well above the number of deficiencies typically identified by regulators following such inspections

<sup>50</sup> Cosette submitted that this was based on the financial information available to Cosette prior to entering into the SID and the information available prior to Cosette communicating its change of intentions to FIRB

- (f) Due to the serious nature of the TXMD litigation, and Mayne Pharma's proposed response to it, Cosette was concerned that Mayne Pharma would *"incur significant unplanned costs and expenses in connection with the TXMD Litigation which would further exacerbate Mayne's financial performance"*.
- (g) While Cosette was aware of, at the time the Scheme Booklet was issued, *"some of the information regarding the adverse developments regarding Mayne"*, Cosette's assessment of those adverse developments was ongoing and was materially delayed by Mayne Pharma's failure to provide Cosette with the information it required.
- (h) At the time the information prepared by Cosette for inclusion in the Scheme Booklet was prepared and provided by Cosette to Mayne Pharma, Cosette had still not made any decision or formed any intention with respect to the Salisbury Site.
- (i) It is commercially rational to intend to discontinue its ownership of the Salisbury Site, and once that intention was formed, Cosette considered that it was required to inform FIRB and Cosette accordingly did so.<sup>51</sup>
- (j) It is also commercially rational for Cosette to preserve its structural alternatives in respect of any discontinuation of its ownership of the Salisbury Site and Cosette is not in possession of all the information necessary to make a choice between them and will not be in such a position until it commences a review and sale process after implementation.

66. In rebuttals, Mayne Pharma submitted that the factors which Cosette asserts underpinned Cosette's change of intentions had been addressed as part of the MAC Court Proceedings, and in particular:

- (a) Cosette's complaints in relation to its view that Mayne Pharma had *"underperformed"* were resoundingly dismissed<sup>52</sup>
- (b) Cosette's contention that receipt of the FDA letter by Mayne Pharma would have any adverse effect on sales of NEXTSTELLIS (and therefore its financial performance in the future) was roundly rejected<sup>53</sup> and

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<sup>51</sup> Cosette submitted, with reference to sections 98B and 76A of the FATA, that if after completion Cosette did decide to dispose of or close the Salisbury Site and the Treasurer was satisfied that Cosette had that intention prior to receipt of the FIRB approval, the Treasurer could both seek to prosecute Cosette in respect of the above offence and revoke the FIRB approval and after doing so seek to unwind the acquisition by Cosette of Mayne Pharma

<sup>52</sup> With reference to paragraph 267 of Justice Black's judgment, which provided: *"...[I]t seems to me that a change in MPG's forecast does not, in itself, have any diminishing effect on MPG's EBITDA for the purposes of the definition of the MAC and the operative clauses in the SID, but only indicates an estimate, at a point of time, of the impact of other matters that may affect MPG's actual Maintainable EBITDA."*

<sup>53</sup> With reference to paragraph 340 of Justice Black's judgment, which provided: *"I have found above, as a matter of fact, that it has not been established that the changes made by MPG as to its marketing strategy, in response to the FDA letter, were adverse rather than positive, and the evidence does not establish that those changes have had, or are reasonably expected to have a material adverse impact on MPG's sales of Nextstellis®. The calculations made by Cosette in submissions, however elaborate and ingenious, cannot raise above the lack of factual basis."*

(c) during the MAC Court Proceedings, Cosette voluntarily withdrew its complaints in relation to the TXMD litigation and the TGA matter, accepting that those matters were insufficient to support a change to Mayne Pharma's business operations and financial performance, did not give rise to a material adverse change and in the context of its complaints, were insignificant issues.

67. Mayne Pharma submitted that "*[p]ut simply, the NSW Supreme Court spent 3 weeks at trial considering all of these matters in detail*" and that in light of the findings of Justice Black, these matters should be viewed by the Panel as not supporting a reasonable basis for Cosette's purported change of intention.

68. Mayne Pharma also submitted that it is appropriate that ASIC's truth in takeovers policy should be applied in this case, noting (among other things):

- (a) The intentions statement in the Scheme Booklet was presented by Cosette to the Court as complete and accurate on 15 May 2025 (and Cosette did not take the opportunity to update that statement<sup>54</sup> when Mayne Pharma released its supplementary scheme booklet on 5 June 2025).
- (b) Just two days later, Cosette served its MAC notice, based on its view of the financial performance of Mayne Pharma, which has since been "*comprehensively debunked*" by the actual performance of the business and the findings of the Court.
- (c) It is clear that, at the time Cosette signed off to Mayne Pharma and the Court on its intentions disclosure, it was "*acutely aware*" of what it perceived to be an adverse turn in Mayne Pharma's financial position.
- (d) Cosette has since explained that its 24 June Statement was driven by its perception of the adverse change in financial performance of Mayne Pharma.
- (e) Cosette did not qualify its intentions statement in the Scheme Booklet by reference at all to its then-existing knowledge (or perception) of Mayne Pharma's financial performance (and again did not suggest any updates being provided in the supplementary scheme booklet released by Mayne Pharma). Had Cosette wished to reserve the right to change its intentions for the business before it undertook its post-implementation review, it should have said so in the Scheme Booklet. Cosette knew at the time it finalised the Scheme Booklet all it needed to know about the financial performance of Mayne Pharma that it alleges led to its change of intention. It did not flag it. To change now is directly contrary to the above policy.

69. Mayne Pharma further developed this submission in rebuttals, submitting that "*[n]othing about Cosette's submissions detracts from these fundamental points*:

- (a) *At the time Cosette provided its intentions disclosure in the Scheme Booklet, it did not qualify those intentions by reference to any of the matters, other than the FDA letter (as*

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<sup>54</sup> Clause 5.3(g) of the SID requires Cosette to update Mayne Pharma of any new information which should have been included in the "Cosette Information" in the Scheme Booklet and any "Cosette Information" which is misleading or deceptive in any material respect

*mentioned in our submissions, this issue does not even relate to the Australian part of the Mayne Pharma business: it is a U.S. only issue).*

(b) *Cosette's own timeline reflects that they were clearly aware of these issues at the time it authorised the Scheme Booklet. It made no mention of the fact that it wanted to understand them better. The reason for this is simple: these matters were, and are, irrelevant. Cosette only seeks to bring them up now, when its conduct is being scrutinised..."*

70. The Panel has applied and endorsed ASIC's truth in takeovers policy and Regulatory Guide 25 in a number of decisions.<sup>55</sup>

71. The principle at the core of the policy is (as Mayne Pharma put it) that "*if a party publicly says they will do something, they must act accordingly*". We agree with Mayne Pharma that this principle is imperative to the orderly conduct of control transactions and the proper functioning of efficient and informed public markets, and that where a party departs from its public statements this has the potential to mislead shareholders and/or undermine the purposes of Chapter 6, depending on the circumstances.

72. In *BreakFree Limited 03 & BreakFree Limited 04*<sup>56</sup>, the Panel observed that requiring persons to act in accordance with statements that they have made to the market concerning their intentions in the context of a takeover bid under Chapter 6 "*promotes the principle set out in section 602(a)*", namely that the acquisition of control over voting shares takes place in an efficient, competitive and informed market. However, the Panel has also stated that the truth in takeovers policy:

*"...is not an absolute rule that the bidder must act out its stated intentions mechanically. What it is reasonable to expect depends also on the degree of precision of its statement, the presence or absence of clear qualifications to the statement, on the acts of other persons, on new circumstances, on later statements of the bidder itself and on how far it is reasonable to expect stated intentions to be pursued."*<sup>57</sup>

73. As Mayne Pharma pointed out, the truth in takeovers policy is commonly considered in the context of "last and final statements" related to 'no increase' or 'accept/not accept' statements. It has been applied quite strictly by the Panel in this context.<sup>58</sup> The Panel has also applied the principle to other statements where it has considered those statements bear on the outcome of a transaction and undermine an efficient, competitive and informed market, including in schemes of arrangement.<sup>59</sup> It is a

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<sup>55</sup> The most recent example being *Dropsuite Limited* [2025] ATP 10, which concerned a statement that Dropsuite Limited's largest shareholder intended to vote in favour of a proposed scheme and subsequent significant disposals of Dropsuite Limited shares by that shareholder which it failed to disclose in a timely manner

<sup>56</sup> [2003] ATP 38 & ATP 39 at [111]

<sup>57</sup> *Taipan Resources NL 06* [2000] ATP 15 at [27]-[28]

<sup>58</sup> See e.g. *Rinker Group Limited 02* [2007] ATP 17

<sup>59</sup> Mayne Pharma referred to the following: no-waiver statements (e.g. *Taipan Resources NL 06* [2000] ATP 15), voting intention statements (e.g. *Summit Resources Limited* [2007] ATP 9; *MYOB Limited* [2008] ATP 27;

matter for the Panel having regard to the circumstances before it to consider if and how the truth in takeovers policy or the principles underlying it should apply in a particular matter. As the Panel stated in *Dropsuite Limited*<sup>60</sup>, the Panel's endorsement of the truth in takeovers principles and RG 25 is "*subject to the duty of the Panel to exercise its powers in accordance with the Corporations Act 2001 (Cth), including by complying with section 657A in making a declaration and section 657D in making orders.*"<sup>61</sup>

74. The Panel has not to our knowledge previously considered the application of the truth in takeovers policy to a bidder's disclosed intentions in relation to the target's business in circumstances analogous to those the subject of this application.
75. We consider that the principles underlying the truth in takeovers policy are relevant here and ASIC confirmed in its submissions that it was of the same view.
76. Mayne Pharma also submitted that a bidder taking active steps that defeat a key condition to a transaction carries obvious implications for the confidence the market can take that a transaction once announced, will ultimately proceed in accordance with its terms. It submitted that this would both undermine the Eggleston principles and the policy objectives underlying a number of specific provisions of Chapter 6, including section 631 (bidders must proceed with a bid once announced) and 629 (defeating conditions cannot be within the control of the bidder). Cosette submitted that sections 631 and 629 do not apply to a scheme transaction for good reason, noting that (unlike a takeover bid without an implementation agreement) the parties have already agreed the conditions and the terms on which they will be satisfied. Although sections 631 and 629 do not directly apply to schemes of arrangement, we agree with Mayne Pharma that the principles underlying those provisions intersect with the broader Eggleston principles, and in particular the efficient, competitive and informed market principle in section 602(a). We therefore consider the principles underlying sections 631 and 629 are relevant to the question of whether the circumstances are unacceptable in this matter as they support market certainty for control transactions.
77. Cosette submitted that bidders routinely express their intentions as "present" or "current" precisely because they are contingent and may change in response to circumstances and that "*were RG 25 applied to intention statements, bidders would need to list every conceivable contingency that might justify a departure – resulting in prolix and unhelpful disclosure inconsistent with the principles in ss 602 and 636*".
78. We agree that it would be problematic to apply the truth in takeovers policy in an inflexible way to customary statements of a bidder's intentions in relation to a target's business having regard to the nature of that disclosure as compared with (for

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*Dropsuite Limited* [2025] ATP 10), statements made by a target about the views and intentions of third parties in relation to a bid (*BreakFree Limited 03 & BreakFree Limited 04* [2003] ATP 38 & ATP 39), and a statement by a target that it would convene a shareholders' meeting (*Summit Resources Limited* [2007] ATP 9)

<sup>60</sup> [2025] ATP 10 at [27]

<sup>61</sup> Citing *Finders Resources Limited 03R* [2018] ATP 11 at [12]

example) last and final statements. Rather, in applying the principles referred to above in the present case, we have considered the circumstances as a whole.

79. Cosette set out at Section 8.3 of the Scheme Booklet a range of qualifications to its disclosed intentions, which it submitted "*clearly qualified its statement of intentions as being statements of Cosette's current intention only and subject to change*", including:

*"After implementation of the Scheme, the Cosette Group may conduct a review of Mayne Pharma and its operations, assets, liabilities, structure and employees, following which it may, as required, review its intentions as set out in this Section. Final decisions regarding these matters will be made in light of all material information, facts and circumstances at the relevant time if the Scheme is implemented.*

*Accordingly, it is important to recognise that the statements set out in this Section 8 are statements of current intention only and may change as new information becomes available or circumstances change."<sup>62</sup>*

80. Cosette also submitted (among other things) that:

- (a) it did limit its intentions to the knowledge that it had and reserved the right to change those intentions as new information emerged and circumstances changed
- (b) it did gain a better understanding after the Scheme Booklet was issued about events occurring prior to the Scheme Booklet being issued; this is both because it had more time to assess that information and because it was waiting for and was belatedly provided with some further information from Mayne Pharma about those matters
- (c) there was also "*a change in circumstances after the issue of the scheme booklet which was the evolution of Cosette's assessment of these matters after working through them with its team*"
- (d) the qualification in relation to the FDA letter was a significant and meaningful qualification
- (e) while the FDA letter was not directly relevant to the Australian business, it was very relevant to the overall financial position of Mayne Pharma and of the combined group following completion and it was therefore directly relevant to the assessment which Cosette was making of the combined incremental impact of all of these adverse matters on the Mayne Pharma business and what impact if any that might have on the viability of each and every business in the combined group including the Australian assets.

81. ASIC submitted that Cosette's qualifications "*are broad and reasonable people may interpret them in different ways... For example, the disclosures do not clearly specify the circumstances in which Cosette may decide to change its intentions before implementation,*

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<sup>62</sup> See paragraph 14(c)

*such as what information or change of circumstance may cause it to change its intentions prior to implementation.”* We agree.

82. We also note that the qualifications expressly referred to any review of Cosette’s intentions occurring “[a]fter implementation of the Scheme” and that “[f]inal decisions... will be made in light of all material information... if the Scheme is implemented.”
83. Cosette acknowledged that “*some of the information*” relevant to the factors informing its change of intentions had “*come to light earlier*” including “*the fact of the material deterioration in Mayne Pharma’s financial performance, material deficiencies identified by the [TGA] in relation to the Salisbury Site, material deficiencies identified by the [FDA] in relation to marketing materials used by Mayne for the NEXTSTELLIS product, the filing of lawsuits between [TXMD] and Mayne*”. Further details in this regard were set out in Cosette’s timeline. For example, the timeline noted that Cosette first became aware of the TGA letter on 15 April 2025, being a month before the time the Scheme Booklet was published, via a telephone call between Cosette’s ‘VP, Quality’ and Mayne Pharma’s ‘VP, Regulatory Affairs’. It also stated that on 19 April 2025 the TGA letter was provided (via the virtual data room) by Mayne Pharma to Cosette along with a copy of “Mayne’s TGA responses”. The timeline also noted that on 8 May 2025, Mayne Pharma uploaded “draft responses to the TGA” and Cosette’s ‘VP, Quality’ provided observations on those responses to a Commercial Operations representative of Cosette.
84. In relation to the FDA letter, Cosette’s timeline noted that Cosette received a copy of the letter from Mayne Pharma as early as 5 May 2025, more than a week before Mayne Pharma’s ASX announcements regarding receipt of the FDA letter on 14 May 2025.
85. In relation to the material deterioration in Mayne Pharma’s FY25 financial performance, we note that Mayne Pharma’s earnings downgrade was announced to the market on 22 April 2025. In addition, on 17 April 2025, per Cosette’s submissions, Mayne Pharma disclosed to Cosette a FY25 9+3 forecast which projected underlying EBITDA for FY25 of \$45 million.
86. In relation to the TXMD litigation, Cosette’s timeline referred to this having been commenced against Mayne Pharma on 8 April 2025, and Mayne Pharma made an ASX announcement in relation to this on 11 April 2025.
87. As noted above, Cosette submitted that it “*was not and still is not in possession of full and current information regarding the Salisbury Site or Mayne’s business*”, which it says delayed its assessment of these matters. Cosette submitted that it has consistently requested further information from Mayne Pharma in relation to the above matters and Mayne Pharma’s business more generally, but has only received limited information from Mayne Pharma since Cosette delivered a notice of intention to terminate the SID on 17 May 2025. It further submitted that Mayne Pharma has consistently refused to provide information to Cosette on the basis that it does not

have any obligation to do so beyond what is strictly necessary for integration.<sup>63</sup> Mayne Pharma rejected these submissions.

88. Cosette provided us copies of a number of the information requests and responses to them. For example, on 14 June 2025, Cosette's solicitors sent a letter to Mayne Pharma's solicitors re-iterating requests for various items of information which it stated had previously been requested but remained unanswered or only partially addressed, such as an updated FY26 budget, monthly P&L details (actuals and forecasts), updated reports for prescription volumes, trade volumes and channel inventory data for the Top 8 products on a weekly basis and 'Preliminary Flash results' in relation to particular months.
89. On 20 June 2025, Mayne Pharma's solicitors provided a letter in reply which included responses next to each item, some of which noted that the requested information had already been provided or discussed during due diligence, and a number of which were to the effect that the requested information was not yet available or not yet completed. The letter also referred to an agenda prepared by Cosette for a 'Joint PMO Meeting' scheduled for 19 June 2025 and stated that the information requested in the agenda goes beyond what is required for the purposes of the SID and "*largely concerns seeking further details in respect of matters put in issue by your client's cross-claim against our client*". It noted, by way of example, detailed requests regarding the "status of the TGA remediation" and the "NEXTSTELLIS update". In relation to the former it stated "*[o]ur client is prepared to provide your client with an update as to general developments on its engagement with TGA at the meeting, which are very limited, if any*". In relation to the latter, it stated "*our client is prepared to update your client with respect to any relevant developments following the close out letter issued by the FDA, but does not propose to provide granular detail as to unit sales and trends for Nextstellis.*"
90. While Cosette may not have been in possession of complete information regarding the matters it stated informed its change of intentions regarding the Salisbury Site, we consider on the materials provided that by the time orders were made at the first court hearing on 15 May 2025 approving the convening of the scheme meeting, Cosette had enough information about those matters to qualify clearly its intentions disclosure with reference to them if Cosette thought the matters in question were important. We do not consider that Cosette did so. In particular, we do not consider Cosette's qualification in relation to the FDA letter in section 8.4(f) of the Scheme Booklet was sufficient to justify its change of intentions in relation to the Salisbury Site, noting that we were not persuaded this directly relates to the Salisbury Site.
91. We also were not persuaded by Cosette's submissions that "*the evolution of Cosette's assessment*" constituted a change in circumstances after the issue of the Scheme

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<sup>63</sup> Pursuant to clause 7.3 of the SID, Mayne Pharma has an obligation to (among other things and subject to certain limits) provide "*reasonable access to information concerning the Mayne Group's businesses, operations and affairs*" for certain prescribed purposes including "*integration planning prior to implementation of the Scheme*"

Booklet having regard to our view above regarding the information Cosette had as at 15 May 2025.

92. Accordingly, we are of the view that it was reasonable for Mayne Pharma shareholders and the market generally to expect that the factors referred to by Cosette would not result in a re-evaluation of Cosette's intentions in relation to the Salisbury Site prior to implementation of the Scheme.
93. ASIC observed that "*[i]t is self-evident that once Cosette issued termination notices on Mayne Pharma, Cosette's intentions had fundamentally shifted--many of the actions it took from that time, including disputing the MAC, were aimed at exiting the transaction*" and submitted that Cosette's changed intention to dispose of or close the Salisbury Site must be interpreted in light of Cosette's overarching intention to exit the transaction along with other actions it took.
94. Mayne Pharma submitted that the reasons produced by Cosette to explain its change of intentions are "manufactured" and that it is telling that Cosette has not produced contemporaneous evidence to support its board's decision on 23 June 2025, such as a board resolution or minutes of the board meeting, and that this suggests that "*either (a) such contemporaneous records do not exist, in which case, a question must be asked as to why such an important board decision was not documented; or (b) that disclosure of such contemporaneous records would not be favourable to Cosette's submissions.*"
95. In rebuttals, Cosette submitted that it has provided a genuine and commercial explanation for its conduct and the Panel should not second guess or reject these factors based purely on inference.<sup>64</sup>
96. We were sceptical about Cosette's change of intentions in relation to the Salisbury Site and its timing having regard to the surrounding circumstances including its attempts to exit the transaction as demonstrated through (among other things) the MAC Notice, the Termination Notice (and subsequent termination notices), the MAC Court Proceedings and the filing of a notice of intention to appeal the MAC Court Proceedings. Cosette's submissions regarding the reasons for its change of intentions did not fully alleviate our concerns. As Cosette stated,<sup>65</sup> the Salisbury Site is not material to Mayne Pharma's overall operations; it represents approximately 7% of Mayne Pharma's overall direct contribution.<sup>66</sup> Moreover, we were not convinced Cosette had adequately explained how some of the factors it cited were linked to the Salisbury Site or the Australian part of Mayne Pharma's business as distinct from Mayne Pharma's US business or the broader business (in particular, the FDA letter<sup>67</sup> and the TXMD litigation).

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<sup>64</sup> Citing a number of previous Panel decisions concerning the drawing of inferences in cases of association, such as *Winepros Limited* [2002] ATP 18 at [27]

<sup>65</sup> See paragraph 65(b)(i)

<sup>66</sup> See Mayne Pharma's FY25 Results Presentation announced on 29 August 2025

<sup>67</sup> Cosette submitted that "*[w]hile it is difficult to single out any one factor as being more important than another, the FDA Letter, when combined with the other factors, was the 'straw that broke the camel's back'*"

97. In performing its role, the Panel typically focuses on the effect of the circumstances on persons and the market in light of the principles in section 602, and the existence of unacceptable circumstances does not depend on intention.<sup>68</sup> Accordingly, we do not consider that we need to reach a conclusion on whether Cosette's change of intentions was genuine, and we emphasise the very limited time we have had to investigate this matter.<sup>69</sup>
98. We consider that the effect of Cosette's stated change of intentions created unacceptable circumstances for the market for control of Mayne Pharma and that it was at least foreseeable to Cosette that its change of intentions in relation to the Salisbury Site put the prospects of receiving FIRB Approval (and consequently, the prospects of the Scheme being implemented) at risk. Put another way, as a result of the stated change of intentions the likelihood of the transaction proceeding was diminished in a way that would not have been reasonably expected by the market based on the disclosure in the Scheme Booklet.

### Disclosure of the change of intentions

99. Mayne Pharma submitted that it first became aware of Cosette's change of intentions in relation to the Salisbury Site on 23 June 2025 at 11:35pm via an email from Cosette's solicitors to Mayne Pharma's solicitors. Mayne Pharma further submitted (among other things) that:
  - (a) On the morning of 24 June 2025 Mayne Pharma's solicitors wrote to Cosette's solicitors expressing serious concerns as to the rationality and confusion likely to be caused by the communication and requested at 10:29am that Cosette's solicitors not send the correspondence to FIRB without first providing Mayne Pharma's solicitors with 24 hours' notice so that Mayne Pharma could approach Justice Black to seek to have the matter relisted and to seek urgent interim relief.
  - (b) Cosette's solicitors did not respond to that email and only later, after being pressed for a response from Mayne Pharma's solicitors, responded to that email confirming that the correspondence had already been sent to FIRB by Cosette's solicitors.<sup>70</sup>
100. In response to the question of whether it is unacceptable that Mayne Pharma scheme shareholders were not informed that Cosette intends to dispose of or close the

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<sup>68</sup> See *Guidance Note 1: Unacceptable Circumstances* at [24]. See also *Pinnacle VRB Ltd 08* [2001] ATP 17 at [57]-[60]. Intention may still be relevant, for example in relation to whether it is in the public interest to make a declaration of unacceptable circumstances or in relation to what final orders (if any) are appropriate

<sup>69</sup> Mayne Pharma also submitted in its application that "*(while it is open to the Panel to do so) it is not necessary to determine whether the 24 June Statement reflects a genuine change in alleged intention on the part of Cosette*" in order to reach a finding of unacceptable circumstances

<sup>70</sup> In support of its submissions, Mayne Pharma provided copies of the underlying correspondence. We note that at approximately 11.58am on 24 June 2025 (prior to the email confirming that the correspondence had already been sent to FIRB) Cosette's solicitors sent an email in response to the email from Mayne Pharma's solicitors of 10.29am on 24 June 2025 which noted (among other things) "[w]e do not propose to engage with Mayne further on this subject in light of our responses and will shortly send our proposed communication to FIRB"

Salisbury Site until more than 2 months after the 24 June Statement, Mayne Pharma submitted (among other things) that:

- (a) To date it has not seen any materials that satisfy it that Cosette's "*alleged intention*" to dispose of or close the Salisbury Site is a genuine intention.
- (b) The 24 June Statement is "*vague and confusing, and Mayne Pharma would submit, deliberately so*". The parties (via their solicitors) engaged in a lengthy period of correspondence on this issue whereby Mayne Pharma was seeking clarity on the meaning of the 24 June Statement, in particular the use of the word 'close'.
- (c) "*It is important to note the ordinary meaning of the word 'close' is to do just that: close the doors of the site, cease operations, terminate contracts and fire all of the (over 240) staff. That would be commercially irrational and clearly likely to cause concern in the mind of FIRB. To put out a statement to that effect to the market would be confusing and risk misinforming or misleading the market.*"
- (d) Cosette's change of intentions was also communicated "*in an environment of confidentiality, was an incomplete statement of intention with no justification, and in the view of Mayne Pharma, false and misleading*".
- (e) Importantly, at the time the 24 June Statement was received, shareholders had already voted to approve the Scheme in which they stood to receive cash consideration and would have no ongoing exposure to Mayne Pharma if the Scheme was implemented.

101. In rebuttals, Cosette submitted that Mayne Pharma may dispute the rationality of Cosette's intention to close the Salisbury Site – however, that is not the same thing as justifying a delay of its disclosure, and that Cosette communicated a clear statement of intention, which was confirmed by Cosette to Mayne Pharma and FIRB on multiple occasions. It further submitted that Mayne Pharma suggests that its subjective view of the 24 June Statement and its potential relevance to shareholders should determine whether disclosure was appropriate and that "*[t]hat is not the appropriate legal standard, particularly given that Mayne was heavily incentivised to not disclose this information to its shareholders*".

102. Mayne Pharma went on to submit that:

- (a) "*[b]etween Saturday 6 September 2025 and Monday 8 September 2025, the confidential and incomplete nature of this issue changed, as at that time, Mayne Pharma became aware that the South Australian Premier had become aware of Cosette's purported change of intention, when it saw in the media on 6 and 7 September 2025, public statements made by or attributed to the Premier*"
- (b) the article published on 7 September 2025 also initially included a factually incorrect statement that Mayne Pharma had advised FIRB of the possible closure in July and
- (c) at this time, the matter was promptly considered and the view formed that
  - (i) Mayne Pharma had an obligation to correct the false statement that it had advised FIRB of a possible closure in July, and (ii) Mayne Pharma was no longer

able to engage on the question of the purported intentions of the bidder in a confidential setting, immediately making an announcement (on the next trading date, being 8 September 2025) of the alleged intention as it had then been communicated to Mayne Pharma.<sup>71</sup>

103. It is not our role to police compliance with continuous disclosure obligations<sup>72</sup> or to interrogate whether the exceptions to Listing Rule 3.1 were enlivened in relation to Cosette's change of intentions in relation to the Salisbury Site. However, we consider there is a sufficient link here between the disclosure (or lack thereof) of Cosette's change of intentions and the purposes of section 602.<sup>73</sup> Although the scheme meeting had already occurred by 24 June 2025, we consider that the market was uninformed about a material development in the Scheme which affected its prospects of success for a substantial period of time after the 24 June Statement and that this was a relevant factor in the overall circumstances. Consistent with our focus on the effect of the circumstances, we did not consider it necessary or appropriate to conclude who was at (or more at) fault for the delay in disclosure.
104. We also had some concerns that the delay in disclosure to the market of the change of intentions in relation to the Salisbury Site may have had an effect on trading activity. In this regard, we note the non-party submission referred to below.<sup>74</sup> We also note Cosette's submission that there was a significant volume of trading after Mayne Pharma's announcement of 8 September 2025 in reliance on those updated intentions (more than 25 million shares at an average volume of more than double the average prior to that announcement).<sup>75</sup> However, in rebuttals Mayne Pharma asserted that Cosette's submission was misleading and submitted that the relevant time period includes the outcome of the litigation which was released to ASX on 16 October 2025 which skews the average trading volume. In the circumstances, we decided not to make further enquiries into the effect (if any) on trading activity.

#### **Extension of time to hear the application**

105. Under section 657C(3), an application for a declaration of unacceptable circumstances under section 657A must be made within two months after the circumstances have occurred or a longer period determined by the Panel.
106. We asked Mayne Pharma why it waited until 6 November 2025 (being more than four months after the 24 June Statement) to bring its Panel application. In response, Mayne Pharma submitted (among other things) as follows:

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<sup>71</sup> We note that an email from Cosette's solicitors to Mayne Pharma's solicitors dated 8 September 2025 in relation to Mayne Pharma's proposed announcement stated that there was "no urgency"

<sup>72</sup> See *Keybridge Capital Limited 02* [2019] ATP 19 at [13]; *Bullseye Mining Limited 03* [2022] ATP 4 at [60]

<sup>73</sup> Compare *Keybridge Capital Limited 02* [2019] ATP 19

<sup>74</sup> See paragraph 125

<sup>75</sup> Cosette submitted that before the announcement (5 July to 7 September 2025) there was a total volume of 10,568,716 shares traded and an average volume of 229,754 shares traded, and after the announcement (8 September to 10 November 2025) there was a total volume of 25,111,081 shares traded and an average volume of 545,893 shares traded

- (a) It was also not until receipt of the Treasurer's preliminary view of 30 October 2025 that the "impact" of Cosette's change of intention statement was clear.
- (b) *"Mayne Pharma has kept the matter of bringing a Panel application under review since 24 June 2025. However, it first sought to clarify Cosette's alleged intentions... and has subsequently been seeking the ability to engage with FIRB directly in order to fully understand the impact of the 24 June Statement and to attempt to provide important information to FIRB to inform its decision: that is, Mayne Pharma first took all steps it could to avoid the unacceptable circumstances eventuating or crystallising. Those attempts were consistently denied by Cosette over the period of time between the 24 June Statement and 7 November 2025. Cosette's reasons for that denial remain unclear to Mayne Pharma..."*
- (c) A Panel application lodged while this exercise was ongoing and where Mayne Pharma had no visibility over whether the 24 June Statement had a negative impact on the FIRB Approval condition would have been speculative, premature and an inappropriate use of the Panel and ASIC's time and resources.

107. Mayne Pharma also submitted that the application is not out of time for the purposes of section 657C(3)(a) as "*the circumstances which have given rise to the unacceptable circumstances occurred on 30 October 2025*" and "*[i]t was upon receipt of the Treasurer's 30 October letter setting out the preliminary view that the Scheme would be contrary to the national interest that the unacceptable circumstances crystallised.*" In its application Mayne Pharma put it differently, submitting that "*the circumstances are on-going*" and "*their impact on the control or potential control of Mayne became known on 30 October 2025*".

108. In *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68, the Full Court of the Federal Court of Australia observed that "*[t]here is a clear delineation between the circumstances and the effect that they have had, are having, will have or are likely to have on the control or potential control of the company or the acquisition, or proposed acquisition, of a substantial interest in the company: s 657A(2)(a)(i) and (ii).*" The Full Court also made the following statements:

- (a) "*In order for the time limitations under ss 657B and 657C to operate effectively the relevant circumstances must be capable of being identified as having arisen at a particular time.*"<sup>76</sup>
- (b) "*That the effects of the circumstances... are continuing does not render the circumstances as continuing to 'occur' or as continuing to 'have occurred'.*"<sup>77</sup>

109. We consider that the Treasurer's preliminary view as set out in his letter of 30 October 2025 constituted an effect of the circumstances which occurred on or about

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<sup>76</sup> *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68 at [64]

<sup>77</sup> *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68 at [69]

24 June 2025, as distinct from the *circumstances* themselves.<sup>78</sup> We are therefore of the view that the application was out of time under section 657C(3)(a).

110. The parties were given an opportunity to make submissions on whether we should exercise our discretion to extend time for the making of the application under section 657(3)(b).<sup>79</sup>
111. In *Webcentral Group Limited 03*<sup>80</sup>, the Panel set out the following factors as relevant in considering whether to do so:
  - (a) the discretion to extend time should not be exercised lightly
  - (b) whether the application made credible allegations of clear and serious unacceptable circumstances, the effects of which are ongoing
  - (c) whether it would be undesirable for a matter to go unheard, because it was lodged outside the two-month time limit, if essential matters supporting it first came to light during the two months preceding the application and
  - (d) whether there is an adequate explanation for any delay, and whether parties to the application or third parties will be prejudiced by the delay.
112. Mayne Pharma submitted that there has been no delay in making an application including for the reasons set out above,<sup>81</sup> and that alternatively if there was delay, that delay was due to the conduct of Cosette and Mayne Pharma should not be prejudiced by such conduct.
113. Mayne Pharma also submitted that prior to 30 October 2025 it was not aware that the Treasurer (or FIRB) had any national interest concerns with respect to the Scheme, and that the receipt of the Treasurer's 30 October 2025 letter was an essential matter supporting the application which first came to light only days prior to the application.
114. Cosette made various submissions regarding why an extension of time should not be granted, including that Mayne Pharma ought to have anticipated the real likelihood of the Treasurer's preliminary decision on 8 September 2025, if not earlier, when the South Australian premier made his objections known and asked the Treasurer to block the transaction.
115. As noted above<sup>82</sup>, we consider it was at least foreseeable that Cosette's change of intentions would negatively impact the prospects of FIRB Approval being obtained. Mayne Pharma itself acknowledged this in its submissions. However, we had some sympathy for Mayne Pharma's submission that lodging its application prior to the receipt of the Treasurer's preliminary view on whether to approve the Scheme on

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<sup>78</sup> See *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68 at [71]

<sup>79</sup> The Panel may first resolve factual questions in an application before deciding whether to extend time: see *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68 at [75], and hence we sought submissions on this issue in parallel with the other enquiries we made of the parties

<sup>80</sup> [2021] ATP 4 at [86]

<sup>81</sup> See paragraph 106

<sup>82</sup> See paragraph 98

30 October 2025 may have been premature or speculative. We also note that judgment in the MAC Court Proceedings was not handed down until 15 October 2025 and consider that prior to that time, those court proceedings would likely have added further complexity to the decision whether to lodge the Panel application.

116. That said, there was a period of 7 days between the communication of the Treasurer's preliminary view and the lodgement of the application on 6 November 2025; in the circumstances we consider that Mayne Pharma could have brought the application more promptly after 30 October 2025, particularly in light of the very short time before the End Date.
117. On balance, we considered that some but not all of the delay in bringing the application had been adequately explained.
118. Having regard to the other factors, we were of the view that the application made credible allegations of clear and serious unacceptable circumstances and that it would be undesirable for the matter to go unheard, including because of the potential public policy implications which we have canvassed elsewhere in these reasons. Accordingly, we decided it was appropriate in this instance to extend time under section 657C(3)(b).

#### **Public interest and policy considerations**

119. Under the Panel's governing legislation we are required to consider the public interest and to take into account any policy considerations we consider relevant when making (or declining to make) a declaration of unacceptable circumstances.<sup>83</sup>
120. Given the potential significance of this matter, we prompted the parties to make reference to any relevant public policy concerns in their submissions.
121. Mayne Pharma made the following submission:

*"Here, Mayne Pharma has actively sought to hold Cosette to the binding commitments it made in the SID. If, after unsuccessfully pursuing legal avenues to terminate the SID, Cosette is allowed to change its intention statements in a way that defeats the transaction, it presents a real risk that other bidders will be emboldened to utilise similar strategies at the expense of target shareholders and market participants more broadly, and is contrary to the principles in section 602(a) of the Corporations Act."*

122. As noted above, in reaching our decision in these proceedings we focused on the effect of the conduct, and we have not made a finding that Cosette's change of intentions in relation to the Salisbury Site was not genuine (again, noting the very limited time available to hear this matter). Our decision is specific to its facts. Nevertheless, we were mindful of the concern raised above and took this into account when considering the public interest. The possibility of bidders in public M&A transactions using a change of intention or similar strategies to weaponise regulatory approvals (over which the target may have limited visibility) and potentially defeat transactions at their discretion is troubling and, in our view,

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<sup>83</sup> See section 657A(2)

fundamentally at odds with the efficient, competitive and informed market principle. This was particularly concerning here where Cosette's MAC claim had been rejected by the Court but the same factors were being relied upon to support Cosette's change of intentions in relation to the Salisbury Site. In our view, this meant that the market for control of Mayne Pharma was not proceeding in a manner generally expected for schemes.

123. Separately, we note that Cosette made a submission that our proposed decision would "*undermine market participants' confidence in the paramountcy of a negotiated contract between parties and the role of the courts in determining disputes relating to these contracts*" and "*would mean bidders could not have confidence that they could rely on negotiated positions as to the circumstances in which they may be obliged to accept conditions of regulatory approval*". We disagree. Our decision seeks to do the opposite by preserving the negotiated transaction and the expectations of the market. The Panel's main function is to ascertain whether unacceptable circumstances exist based on the policies of Chapter 6 and, if they do, to take action by way of declaration and orders to remove those unacceptable circumstances.<sup>84</sup> In performing our role we have been sensitive to the provisions of the SID. Moreover, we did not consider that we needed to make any findings regarding compliance with provisions of the SID, noting that any disputes between the parties in this regard can be heard and determined in court.
124. We also noted Cosette's submission that our proposed decision could mean that bidders need to change their current approach to the disclosure of intentions in relation to the target's business and add to their disclosure long lists of specific circumstances in which their intention might change.<sup>85</sup> The change of intention in the present circumstances occurred *prior* to implementation, which (in our experience) is rare. We asked the parties whether there are any analogous examples of changes of intention in a scheme of arrangement or other transaction that they wished to bring to our attention, but we were not referred to any relevant examples in the Australian market.

#### Non-party submission

125. We note that early in the proceedings we received a non-party submission from two individuals who stated that they were shareholders of Mayne Pharma. The submission raised similar complaints to Mayne Pharma's application. It was noted in the submission that one of the shareholders had acquired Mayne Pharma shares between 24 June and 30 October 2025 relying on the representations in the SID and Scheme Booklet, and would not have made these purchases had Cosette disclosed its "*contrary intentions*" to FIRB to the market. The shareholders also submitted that Cosette should be ordered to "*compensate shareholders an amount equal to either (1) the loss incurred between [their] purchase price and post-disclosure price, or (2) the Scheme price of \$7.40 per share*".

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<sup>84</sup> *Email Limited 02* [2000] ATP 4 at [3]

<sup>85</sup> See paragraph 77

126. As part of our brief in relation to the application, we gave the parties an opportunity to make submissions in response to the non-party submission. Cosette submitted that the non-party submission generally repeats many of the same arguments as in the application, to which Cosette repeats in response its preliminary submissions and other submissions in response to the brief. Cosette further submitted that the losses referred to by the shareholders have arisen not from Cosette's update of intentions but from Mayne Pharma's failure to disclose the update of intentions to the market on 24 June 2025.
127. We took the non-party submission and submissions in response to it into account in reaching our decision. In particular, we discuss our reasoning concerning the market being uninformed about Cosette's change of intentions in relation to the Salisbury Site at paragraphs 103 to 104.<sup>86</sup>

## DECISION<sup>87</sup>

### Declaration

128. It appears to us that the circumstances are unacceptable having regard to the effect that we are satisfied they have had, are having, will have or are likely to have on the control, or potential control, of Mayne Pharma, or having regard to the purposes of Chapter 6 set out in section 602.
129. Accordingly, we made the declaration set out in Annexure B and consider that it is not against the public interest to do so. We had regard to the matters in section 657A(3).

### Orders

130. Following the declaration, we made the final orders set out in Annexure C. We were not asked to, and did not, make any costs orders. The Panel is empowered to make 'any order'<sup>88</sup> if 4 tests are met:
  - (a) It has made a declaration under section 657A. This was done on 19 November 2025.
  - (b) It must not make an order if it is satisfied that the order would unfairly prejudice any person. For the reasons below, we are satisfied that our orders do not unfairly prejudice any person.
  - (c) It gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on

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<sup>86</sup> See also paragraph 141

<sup>87</sup> We informed the parties that we intended to provide a copy of our communications concerning our proposed decision and supplementary brief on declaration and orders, our revised proposed decision and our final decision to the Foreign Investment Division for information, and we did so on 18 November 2025, 19 November 2025 and 19 November 2025 respectively

<sup>88</sup> Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

18 November 2025. Each party made submissions. Mayne Pharma and Cosette made rebuttal submissions; ASIC did not.

(d) It considers the orders appropriate to either protect the rights and interests of persons affected by the unacceptable circumstances, or any other rights or interests of those persons, or ensure that a takeover or proposed takeover proceeds as it would have if the circumstances had not occurred. We set out our observations on this aspect below.

131. At the time we issued our supplementary brief on declaration and orders on 18 November 2025, the statutory deadline for FIRB was 20 November 2025<sup>89</sup> and the End Date was (pursuant to our interim orders) 24 November 2025. We were not minded to make orders further extending the End Date as we considered that based on Cosette's submissions in relation to debt financing this would likely be unfairly prejudicial.

132. Mayne Pharma sought a final order that Cosette agrees to any conditions reasonably required by the Treasurer in connection with the Salisbury Site (including conditions reasonably restraining its closure) that are not inconsistent with Cosette's prior intentions disclosure in the Scheme Booklet. We were minded to consider that such an order would protect the rights and interests of Mayne Pharma shareholders; however, we queried whether the reasonableness qualifier included in the requested orders was appropriate in the circumstances as this could potentially give Cosette a basis to challenge any proposed conditions, noting the extremely tight timing before the End Date. Accordingly, we asked the parties to make submissions on a form of order which omitted the references to "reasonably" (**Proposed Orders**).

133. Cosette submitted that the Proposed Orders are unfairly prejudicial to Cosette and at a minimum must reinstate the element of reasonableness. It submitted that the Proposed Orders go beyond Cosette's obligations under the SID (which in effect require FIRB Approval to be subject only to "*such other conditions acceptable to Cosette (acting reasonably)*"<sup>90</sup>) and have the effect of putting Cosette in a "*materially worse position than it would have been under the contractual rights available to Cosette absent the change in intention*".

134. Cosette submitted that the Proposed Orders (and even the formulation proposed by Mayne Pharma) "*remove the ability of Cosette to assess the reasonableness of any condition*

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<sup>89</sup> We were informed on 17 November 2025 that FIRB had extended the statutory deadline from 17 November 2025 to 20 November 2025

<sup>90</sup> Clause 3.1(a) of the SID

*proposed by FIRB from its perspective, which it is contractually entitled to do under the SID". Cosette proposed an alternative form of orders:*

- "1. That Cosette agrees to conditions required by the Treasurer in connection with the Salisbury Site that are acceptable to Cosette (acting reasonably).*
- 2. That in complying with order (1) above, Cosette must not act inconsistently with its intentions as disclosed in the Scheme Booklet dated 15 May 2025."*

- 135. Cosette further submitted that "*in order to remedy any unacceptable circumstances, all the Panel is required to do is to put the parties in the same position had the unacceptable conduct not occurred*"<sup>91</sup> and this "*does not permit the Panel to put Cosette in a worse position as compared to the contractual rights which it would have been entitled to even if its intentions had not changed*".
- 136. Section 657D(2)(b) permits the Panel to make orders it thinks appropriate to ensure a takeover bid proceeds (as far as possible) in a way that it would have proceeded if the unacceptable circumstances had not occurred. It is not restrictive in the way described by Cosette. The Panel may make any order under section 657D(2) but it must not make an order "*if it is satisfied that the order would unfairly prejudice any person*".<sup>92</sup>
- 137. We took into account the submissions of both parties including in relation to potential unfair prejudice and decided to reinstate the element of reasonableness in the form originally requested in Mayne Pharma's application for final orders. We were concerned that Cosette's alternative orders did little more than confirm that it is required to comply with its obligations under the SID. Our final orders, on the other hand, create new rights and obligations and are necessary to protect the rights or interests of Mayne Pharma shareholders adversely affected by the circumstances we have found to be unacceptable.
- 138. Mayne Pharma requested that a mechanism be added to the Proposed Orders to further extend the End Date, submitting that if FIRB requires more time or Cosette has not confirmed agreement to any FIRB conditions, Mayne Pharma will need to move the date of the second court hearing which was scheduled for 21 November 2025, and this will only be practically possible where the End Date has also moved accordingly. It also submitted that Cosette has already demonstrated that there is a serious question as to whether it will act reasonably<sup>93</sup> and suggested that "*Panel oversight*" may be necessary.
- 139. We did not consider it appropriate for there to be a mechanism for further extension of the End Date or for the Panel to be the arbiter of whether any proposed FIRB conditions are reasonable.

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<sup>91</sup> Referring to section 657D(2)(b)

<sup>92</sup> Section 657D(1)

<sup>93</sup> Mayne Pharma submitted that Cosette "*pre-emptively told FIRB it would not consider any conditions that would limit its commercially reasonable options to dispose of or close the Australian business as soon as practicable after the closing of the transaction*", with reference to an email from Cosette to FIRB dated 7 November 2025

140. Cosette submitted that Mayne Pharma should be ordered to compensate shareholders who traded on an uninformed basis between 24 June 2025 and 8 September 2025.
141. We also did not consider it appropriate on the materials before us to explore a potential order in relation to compensating shareholders, noting we have not made a finding of fault in relation to the delay in disclosure of Cosette's change of intentions in relation to the Salisbury Site.<sup>94</sup>
142. We made an additional order proposed by Mayne Pharma (and incorporating amendments suggested by Cosette) relating to disclosure of communications with FIRB, which Mayne Pharma stated in its submissions "*is suggested purely given the extremely tight timeframes involved in the finalization of any conditions*". A technical final order was also made in relation to the continuing effect of the interim orders extending the End Date.<sup>95</sup>
143. We consider that the circumstances of this matter and in particular the time constraints the End Date presented limited our ability to remedy the unacceptable circumstances. We heard the matter on an expedited basis which included a truncated timetable for submissions that extended across weekends. If the application had been brought earlier there may have been more that could have been done. In any event, our orders aimed to provide a pathway to FIRB Approval and implementation of the Scheme.

## POST-SCRIPT

144. On 21 November 2025, the Treasurer issued a prohibition order in relation to the Scheme. In his media release in relation to the decision, the Treasurer stated (among other things) that "*[f]ollowing broad consultation, I received unequivocal advice from Treasury and FIRB that no conditions could be put in place to adequately mitigate national interest risks, particularly unique risks to the supply of critical medicines.*"

**Yasmin Allen AM**  
**President of the sitting Panel**  
**Decision dated 19 November 2025**  
**Reasons given to parties 8 January 2026**  
**Reasons published 21 January 2026**

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<sup>94</sup> See paragraph 103

<sup>95</sup> Noting that the interim orders ceased to have effect on (among other things) the determination of the proceedings

**Takeovers Panel**

**Reasons - Mayne Pharma Group Limited**  
**[2025] ATP 35**

**Advisers**

<b>Party</b>	<b>Advisers</b>
Mayne Pharma Group Limited	Gilbert + Tobin
Cosette Pharmaceuticals, Inc.; Cosette Australia BidCo Pty Ltd; Cosette Pharmaceuticals Holdings, Inc.	Corrs Chambers Westgarth



**Australian Government**

**Takeovers Panel**

## **Annexure A**

### **CORPORATIONS ACT SECTION 657E INTERIM ORDERS**

#### **MAYNE PHARMA GROUP LIMITED**

Mayne Pharma Group Limited made an application to the Panel dated 6 November 2025 in relation to its affairs.

The Panel ORDERS:

1. The definition of End Date as defined in or for the purposes of (as applicable) the Scheme Implementation Deed, Scheme and Deed Poll is amended to read:

"24 November 2025 or such other date as may be agreed in writing between Mayne and Cosette."
2. Without the prior consent of the Panel, Cosette must not take any steps to terminate the Scheme Implementation Deed pursuant to clauses 3.7 or 15.1(a)(ii) as a result of the End Date in the Scheme Implementation Deed having lapsed.
3. These interim orders have effect until the earliest of:
  - (i) further order of the Panel
  - (ii) the determination of the proceedings and
  - (iii) 2 months from the date of these interim orders.

#### Definitions

Capitalised terms have the meaning given to them in the Scheme Implementation Deed unless defined below.

**Cosette** means Cosette Pharmaceuticals, Inc.

**Cosette Sub** means Cosette Australia BidCo Pty Ltd.

**Deed Poll** means the Deed Poll executed by Cosette and Cosette Sub in favour of the Scheme Shareholders dated 9 May 2025.

**Mayne Pharma** means Mayne Pharma Group Limited.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 20 February 2025 between Mayne Pharma and Cosette (as amended from time to time).

**Scheme** means the members' scheme of arrangement under Part 5.1 of the Corporations Act between Mayne Pharma and the Scheme Shareholders under which all of the Scheme Shares will be transferred to Cosette Sub and the Scheme Shareholders will be entitled to receive the Scheme Consideration, in the form attached to the Scheme Booklet released by

**Takeovers Panel**

**Reasons – Mayne Pharma Group Limited**  
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Mayne to ASX on 15 May 2025, together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Mayne Pharma and Cosette (or Cosette Sub as applicable).

**Tania Mattei**  
**General Counsel**  
**with authority of Yasmin Allen AM**  
**President of the sitting Panel**  
**Dated 14 November 2025**

**Annexure B**

**CORPORATIONS ACT  
SECTION 657A**

**DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

**MAYNE PHARMA GROUP LIMITED**

**BACKGROUND**

1. Mayne Pharma Group Limited (**Mayne Pharma**) is an ASX-listed pharmaceuticals company (ASX: MYX). Its business is predominantly US-based. However, it also has a presence in Australia, including a manufacturing site in Salisbury, South Australia (the **Salisbury Site**), which employs in excess of 200 people.
2. Cosette Pharmaceuticals, Inc. (**Cosette**) is the main operating entity of the Cosette group, a US-based pharmaceuticals group.<sup>1</sup>
3. On 20 February 2025, Mayne Pharma entered into a scheme implementation deed (**SID**) with Cosette in relation to the acquisition of all of the shares in Mayne Pharma for \$7.40 cash per share by way of scheme of arrangement (**Scheme**), subject to certain conditions precedent, including that no “Mayne Material Adverse Change” (**MAC**) occurs and that Cosette receives the Treasurer’s approval under the Foreign Acquisitions and Takeovers Act (**FIRB Approval**). The SID is subject to an “End Date” of 24 November 2025, unless extended by agreement between the parties.<sup>2</sup>
4. On 25 February 2025, Cosette lodged an application with the Foreign Investment Review Board (**FIRB**) seeking FIRB Approval.
5. On 15 May 2025, the first court hearing in relation to the Scheme occurred, at which both Mayne Pharma and Cosette appeared and at which orders were made approving the convening of the scheme meeting and approving distribution of the explanatory statement in relation to the Scheme (**Scheme Booklet**).
6. Also on 15 May 2025, Mayne Pharma released the Scheme Booklet. The Scheme Booklet included information provided by Cosette, including the following statements in Section 8 in respect of Cosette’s intentions:
  - (a) *“If the Scheme is implemented, the Cosette Group’s current intention is to continue the business and operations of Mayne Pharma largely in the same manner as it is currently*

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<sup>1</sup> Cosette and Cosette Australia BidCo Pty Ltd are each wholly owned subsidiaries of Cosette Pharmaceuticals Holdings, Inc., which is jointly owned and controlled by Avista Capital Holdings LP and Hamilton Lane Advisors LLC

<sup>2</sup> Pursuant to the Panel’s interim orders dated 14 November 2025 which (in effect) extended the End Date from 20 November 2025 to 24 November 2025

*operated and to investigate opportunities to integrate and grow Mayne Pharma's business (which may include further investment flowing to Mayne Pharma)."<sup>3</sup>*

(b) *"Following implementation of the Scheme, the Cosette Group will review Mayne Pharma's business operations and organisational structure to ensure that the combined Mayne Pharma Group and Cosette Group has the appropriate mix and level of employees and skills to enhance the business going forward and enable it to pursue growth opportunities.*

*The Cosette Group's current intention is to retain Mayne Pharma's existing employees to the extent that it is commercially appropriate to do so."<sup>4</sup>*

(c) *"The statements in this Section 8 (Information on Cosette and Cosette Group) regarding the Cosette Group's intentions are based on information concerning the Mayne Pharma Group and the general business environment which are known to the Cosette Group at the time of the preparation of this Scheme Booklet. After implementation of the Scheme, the Cosette Group may conduct a review of Mayne Pharma and its operations, assets, liabilities, structure and employees, following which it may, as required, review its intentions as set out in this Section. Final decisions regarding these matters will be made in light of all material information, facts and circumstances at the relevant time if the Scheme is implemented.*

*Accordingly, it is important to recognise that the statements set out in this Section 8 are statements of current intention only and may change as new information becomes available or circumstances change."<sup>5</sup>*

(d) *"The Cosette Group refers to the announcements made by Mayne Pharma to ASX on 14 May 2025 as referred to in Section 7.10 [in relation to a letter from the FDA]. The matters described in these announcements remain under consideration by the Cosette Group as at the date of this Scheme Booklet, including in relation to the impact of these matters on Mayne Pharma and its business and operations."<sup>6</sup>*

(e) *"Other than as disclosed in this Section 8 (Information on Cosette and Cosette Group), there is no information regarding the Cosette Group or its intentions regarding Mayne Pharma, that is material to the making of a decision by a Mayne Pharma Shareholder on whether or not to vote in favour of the Scheme that is within the knowledge of any director of Cosette or Cosette Sub as at the date of this Scheme Booklet that has not been previously disclosed to Mayne Pharma Shareholders."<sup>7</sup>*

7. Cosette's application with FIRB referred to in paragraph 4 included substantially similar disclosure in relation to Cosette's intentions as set out in paragraph 6.

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<sup>3</sup> At Section 8.3(b)

<sup>4</sup> At Section 8.3(d)

<sup>5</sup> At Section 8.3(a)

<sup>6</sup> At Section 8.4(f)

<sup>7</sup> At Section 8.4(f)

8. On 17 May 2025, Cosette served a notice on Mayne Pharma seeking to assert that a MAC had occurred. Cosette subsequently issued four termination notices upon Mayne Pharma, including alleging that the MAC had been triggered, that Mayne Pharma had breached its continuous disclosure obligations and that Mayne Pharma had misled Cosette into entering into the SID (**Termination Notices**).
9. On 4 June 2025, Mayne Pharma commenced proceedings in respect of the Termination Notices in the Supreme Court of New South Wales (**Court**) seeking orders that Cosette had not validly terminated the SID.
10. On 5 June 2025, Mayne Pharma released a supplementary scheme booklet containing disclosure in relation to (among other things) the Termination Notices and the Court proceedings in respect of them.
11. On 18 June 2025, Mayne Pharma shareholders voted in favour of the Scheme at the scheme meeting.

## CIRCUMSTANCES

12. On 24 June 2025, Cosette made a communication to FIRB to the effect that it had re-evaluated its intentions concerning Mayne Pharma's business in Australia and determined that "*its current intention is to seek to dispose of or close*" the Salisbury Site. Cosette provided Mayne Pharma with a copy of this communication on the same day.
13. The factors relevant to Cosette's update to its intentions, as submitted by Cosette, included the matters contained in the Termination Notices as well as other factors including that the Australian operations were not material to Mayne Pharma's overall operations and significantly less material in the context of the combined business.
14. On 8 September 2025, following media reports that South Australia's Premier had intervened in the FIRB process, Mayne Pharma announced (among other things) the following:

*"Mayne Pharma is aware that, since Cosette's purported termination of the Scheme, Cosette has had some correspondence with FIRB in respect of its intentions for the Mayne Pharma business (including possible intentions to either close or sell the Salisbury site) following implementation of the Scheme, should Cosette's attempts to terminate, or otherwise get out of its obligations under, the SID, fail."*

15. On 15 October 2025, the Court determined that no MAC had occurred and accordingly the Termination Notices were invalid and the SID remains valid and on foot.
16. On 31 October 2025, Mayne Pharma announced an update on the status of FIRB Approval following the receipt of a letter from the Treasurer to Cosette dated 30 October 2025, including as follows:

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*“Mayne Pharma has been provided by Cosette with a letter received from the Treasurer indicating that his “preliminary view is that the Proposed Acquisition would be contrary to the national interest, on the grounds that it would negatively impact the Australian economy and community”. The letter states that the Treasurer is considering whether he should make orders prohibiting the acquisition contemplated by the Scheme.*

*The letter specifically refers to the fact that on 24 June 2025 … the “Treasury was advised that Cosette had re-evaluated its intentions concerning Mayne Pharma’s business in Australia and determined that if Cosette were to acquire Mayne Pharma, its current intention is to seek to dispose of, or close, the manufacturing site in Adelaide” and goes on to detail the Treasurer’s view as to the importance of that site to Australia’s pharmaceutical manufacturing and research and development capabilities. The letter does not point to any other basis for the Treasurer’s preliminary view…”*

#### EFFECT

17. The Panel considers that it was reasonable for Mayne Pharma shareholders and the market generally to expect that the matters contained in the Termination Notices would not result in a re-evaluation of Cosette’s intentions in relation to the Salisbury Site<sup>8</sup> prior to implementation of the Scheme, particularly given that:
  - (a) the matters contained in the Termination Notices were known before orders were made approving the convening of the scheme meeting
  - (b) Mayne Pharma shareholders voted on the Scheme and the market traded on the basis that any review of Cosette’s intentions would occur *“after implementation of the Scheme”* and
  - (c) the Court has determined that no MAC had occurred and accordingly the Termination Notices were invalid and the SID remains valid and on foot.
18. The Panel considers that it was at least foreseeable to Cosette that its change of intentions in relation to the Salisbury Site put the prospects of receiving FIRB Approval (and consequently, the prospects of the Scheme being implemented) at risk.
19. Cosette’s change of intentions in relation to the Salisbury Site means that the market for control of Mayne Pharma is not proceeding in a manner generally expected for schemes and is contrary to an efficient, competitive and informed market.
20. During the period between 24 June 2025 and 8 September 2025, the market was uninformed of Cosette’s change of intentions in relation to the Salisbury Site.

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<sup>8</sup> Except as qualified, see paragraphs 6(c) and 6(d)

## CONCLUSION

21. It appears to the Panel that the circumstances are unacceptable circumstances:
  - (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on the control, or potential control, of Mayne Pharma or
  - (b) having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001 (Cth)* (**Act**).
22. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3) of the Act.

## DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Mayne Pharma.

**Tania Mattei**  
**General Counsel**  
**with authority of Yasmin Allen AM**  
**President of the sitting Panel**  
**Dated 19 November 2025**

**Annexure C**

**CORPORATIONS ACT  
SECTION 657D  
ORDERS**

**MAYNE PHARMA GROUP LIMITED**

The Panel made a declaration of unacceptable circumstances on 19 November 2025.

**THE PANEL ORDERS**

1. Cosette must agree to any conditions reasonably required by the Treasurer in connection with the Salisbury Site (including conditions reasonably restraining its closure) that are not inconsistent with Cosette's prior intentions disclosure in the Scheme Booklet.
2. Each of Cosette and Mayne Pharma must provide, and consent to the disclosure of, all communications between the Foreign Investment Review Board and that party in connection with the foreign investment application made by Cosette on or about 25 February 2025, to the other party immediately upon issue or receipt of such communications, provided that each party is entitled to redact or not disclose any part of that communication which contains or constitutes competitively sensitive or privileged information relating to that party.
3. The definition of "End Date" as defined in and for the purposes of (as applicable) the Scheme Implementation Deed, Scheme and Deed Poll is amended to read as per the definition of End Date in these orders.

**Interpretation**

4. In these orders, capitalised terms have the meaning given to them in the Scheme Implementation Deed unless defined below.

<b>Cosette</b>	Cosette Pharmaceuticals, Inc.
<b>Cosette Sub</b>	Cosette Australia BidCo Pty Ltd
<b>Deed Poll</b>	The Deed Poll executed by Cosette and Cosette Sub in favour of the Scheme Shareholders dated 9 May 2025
<b>End Date</b>	24 November 2025 or such other date as may be agreed in writing between Mayne Pharma and Cosette
<b>Mayne Pharma</b>	Mayne Pharma Group Limited
<b>Salisbury Site</b>	Mayne Pharma's manufacturing site in Salisbury, South Australia

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<b>Scheme</b>	The members' scheme of arrangement under Part 5.1 of the Corporations Act between Mayne Pharma and the Scheme Shareholders under which all of the Scheme Shares will be transferred to Cosette Sub and the Scheme Shareholders will be entitled to receive the Scheme Consideration, in the form attached to the Scheme Booklet, together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Mayne Pharma and Cosette (or Cosette Sub as applicable)
<b>Scheme Booklet</b>	The explanatory statement released by Mayne Pharma to ASX on 15 May 2025
<b>Scheme Implementation Deed</b>	The Scheme Implementation Deed dated 20 February 2025 between Mayne Pharma and Cosette (as amended from time to time)

**Tania Mattei**  
**General Counsel**  
**with authority of Yasmin Allen AM**  
**President of the sitting Panel**  
**Dated 19 November 2025**