



**Australian Government**

**Takeovers Panel**

**Reasons for Decision  
Cyclone Metals Limited  
[2026] ATP 2**

**Catchwords:**

*Decline to conduct proceedings – board spill – collective action – association – requisition notice – acting in concert – trading activity – control*

*Corporations Act 2001 (Cth), sections 12(2), 203D, 249D, 249F, 606, 671B, 657C(3)(b)*

*ASIC Regulatory Guide 128: Collective action by investors*

*Tissue Repair Ltd [2024] ATP 20, Agua Resources Limited [2019] ATP 13, Australian Whisky Holdings Limited [2019] ATP 12, Caravel Minerals Limited 02R [2018] ATP 10, Caravel Minerals Limited [2018] ATP 8, Auris Minerals Limited [2018] ATP 7, IFS Construction Services Limited [2012] ATP 15, Mount Gibson Iron Limited [2008] ATP 4*

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

## INTRODUCTION

1. The Panel, Alberto Colla, Bruce Cowley (sitting President) and Marina Kelman, declined to conduct proceedings on an application by the Applicant in relation to the affairs of Cyclone. The application concerned an alleged undisclosed association between certain Cyclone shareholders in the context of a requisitioned general meeting called under section 249D<sup>1</sup> in which the applicant was removed as a director of Cyclone. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

<b>Applicant</b>	Mr Antony Sage
<b>April Notices</b>	the notices referred to in paragraphs 5 and 6 below
<b>August Notices</b>	the notices referred to in paragraphs 9 and 10 below
<b>Cyclone</b>	Cyclone Metals Limited
<b>EGM</b>	has the meaning given in paragraph 11
<b>European Lithium</b>	European Lithium Limited
<b>Requisitioning Shareholders</b>	has the meaning given in paragraph 9

---

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

## Takeovers Panel

### Reasons - Cyclone Metals Limited [2026] ATP 2

#### FACTS

3. Cyclone is an ASX listed company (ASX code: CLE).<sup>2</sup> Its principal activity is mineral investment, exploration and evaluation.
4. In December 2000, the Applicant was appointed to the board of Cyclone.
5. On 28 March 2025 and 1 April 2025, a group of four shareholders provided Cyclone with notices pursuant to section 203D and section 249D respectively, seeking the removal of the Applicant (one of four directors) from the board of Cyclone.
6. On 1 April 2025, another group of four shareholders, including European Lithium,<sup>3</sup> provided Cyclone with notices pursuant to section 203D and section 249F seeking the removal of the other three directors Mr Paul Berend, Mr Luke Martino and Mr David Sanders from the board of Cyclone.
7. On 2 April 2025, following a meeting between (among others) Mr Martino and the Applicant, it was resolved that:
  - (a) the Applicant would resign immediately following Cyclone's 2025 annual general meeting and
  - (b) the relevant parties would withdraw the April Notices by 3 April 2025.
8. On 3 April 2025, the April Notices were withdrawn.
9. On 20 August 2025:
  - (a) a group of eight shareholders (**Requisitioning Shareholders**) including:
    - (i) two of the shareholders who had lodged an April Notice seeking to remove the Applicant from the board of Cyclone and
    - (ii) Mr Berendprovided Cyclone with a notice pursuant to section 203D seeking to remove the Applicant from the board of Cyclone and
  - (b) European Lithium provided Cyclone with a notice pursuant to section 203D seeking the removal of Mr Berend, Mr Martino and Mr Sanders.
10. On 21 August 2025, each of the Requisitioning Shareholders and European Lithium provided Cyclone with a notice pursuant to section 249D requesting that the directors hold a general meeting to consider the respective section 203D resolutions.
11. On 11 September 2025, Cyclone issued a notice for an extraordinary general meeting to be held on 21 October 2025 to consider the resolutions contained in the August Notices (**EGM**).
12. On 21 October 2025, Cyclone announced the results of the meeting held that day, being:

---

<sup>2</sup> On 27 January 2026, shareholder approval was given for the change of company name to Iron Bear Resources Limited (ASX: IBR)

<sup>3</sup> The Applicant is a director of European Lithium Limited

## Takeovers Panel

### Reasons - Cyclone Metals Limited [2026] ATP 2

- (a) the resolution with respect to the Applicant's removal was carried, with 71.27% of votes cast in favour and
  - (b) all other resolutions were not carried, with the votes cast against each of these resolutions ranging from 70.69% to 73.99%.
13. On 24 October 2025, Cyclone issued a notice of meeting for its 2025 annual general meeting to be held on 24 November 2025.
14. On 2 December 2025, Cyclone announced that it had received a section 249D notice from the Applicant requesting the company to call a meeting to consider the resolution to remove Mr Berend as a director of Cyclone.
15. On 22 December 2025, Cyclone issued a notice for an extraordinary general meeting to be held on 27 January 2026 to consider (among other things) such resolution.

### APPLICATION

16. By application dated 19 December 2025, the Applicant sought a declaration of unacceptable circumstances. The Applicant submitted that the Cyclone shareholders who lodged notices in April and August 2025 seeking to remove the Applicant as a director of Cyclone, as well as their associates (together, **Alleged Associates**)<sup>4</sup> were undisclosed associates who had been acting in concert to change the composition of Cyclone's board.
17. The Applicant also submitted that the Alleged Associates purchased or otherwise traded in Cyclone shares at or around the time of the April Notices and the August Notices.
18. The Applicant submitted that the Alleged Associates had voting power of 20.38% in Cyclone at the time of the EGM and that the effect of the circumstances was that the change in control of Cyclone did not take place in an informed market as shareholders were not made aware of the association.

### Final orders sought

19. The Applicant sought final orders to the effect that the Alleged Associates:
- (a) disclose their association in a substantial holder notice
  - (b) not exercise any voting rights in respect of shares acquired by the Alleged Associates during the relevant April and August trading periods for a period of 12 months and
  - (c) not acquire any Cyclone shares until the end of that 12-month period.

---

<sup>4</sup> In addition, the Applicant included two other Cyclone shareholders as Alleged Associates, who had traded in Cyclone shares around the time of the April Notices and the August Notices and whose directors were involved with another entity engaged with (but not a signatory of either) the April Notices and the August Notices

## DISCUSSION

### Insufficient evidence and lack of control effect

20. The Applicant identified sub-groups within the Alleged Associates and, for each sub-group, stated the basis for the allegation of association and the corresponding voting power.
21. In summary, the Applicant submitted that the allegation of association arose from:
  - (a) joint participation in requisition notices under section 203D and section 249D and shared knowledge of the requisition process
  - (b) “*coordinated and clustered trading activity*” around those notices
  - (c) overlapping control and structural links between those entities and
  - (d) a common objective, namely the removal of the Applicant and the appointment of Mr Berend as managing director of Cyclone.
22. ASIC Regulatory Guide 128<sup>5</sup> states that jointly signing a section 249D notice is likely to be considered entering into a relevant agreement and for these investors to be considered associates.
23. In *Caravel Minerals Limited*<sup>6</sup>, the Panel stated that:

*“It was not clear to us, in the circumstances of this case, that the signing of the s249D Notice alone was sufficient to establish a relevant agreement between the Requisitioning Shareholders. While there was a shared frustration among the Requisitioning Shareholders with the actions of the Caravel board, we are not satisfied that there was necessarily a ‘meeting of minds’ of all who signed the requisition or that it was established that the purpose of all who signed went beyond causing the resolutions to be put to a meeting.”*
24. The review Panel in turn provided that “[t]o the extent that matters relevant to our jurisdiction are concerned, we agree with ASIC that jointly signing a s249D notice is “likely to be considered entering into a relevant agreement” giving rise to association, although we were of the view this will not necessarily be the case in all situations.”<sup>7</sup>
25. The Panel’s starting point for an association matter is that it is for the applicant to demonstrate a sufficient body of evidence of association and to convince the Panel as to that association, albeit with proper inferences being drawn (see *Mount Gibson Iron Limited*).<sup>8</sup>
26. Here, based on the materials before us, it is unclear whether the mere signing of the April Notices and the August Notices was enough to constitute a relevant agreement among the Alleged Associates. Aside from the notices themselves, there is limited material – anecdotal trading patterns unsupported by evidence – to support an inference of ‘meeting of minds’ among all the Alleged Associates, or that their

---

<sup>5</sup> ASIC Regulatory Guide 128: Collective action by investors, table 2

<sup>6</sup> [2018] ATP 8

<sup>7</sup> *Caravel Minerals Limited 02R* [2018] ATP 10

<sup>8</sup> [2008] ATP 4 at [15]

## Takeovers Panel

### Reasons - Cyclone Metals Limited [2026] ATP 2

objective went beyond permissible collective action and the bringing of resolutions to a shareholder meeting.

27. It is also unclear how much voting power the Alleged Associates have. The Applicant submitted that they had voting power of 20.38% in Cyclone at the time of the EGM but failed to provide evidence to support this. Relying on the information provided in the application for each of the sub-groups of Alleged Associates,<sup>9</sup> the total voting power appears to be well below 20%.
28. In *Aguia Resources Limited*,<sup>10</sup> the Panel stated that (footnotes omitted):
- “In considering whether to conduct proceedings on the question of whether shareholders are associated in the context of a board spill, the Panel will apply its well established principle that the applicant must demonstrate a sufficient body of evidence of association to convince the Panel as to that association, albeit with proper inferences being drawn. As a practical matter, it may be more difficult for an applicant to demonstrate a sufficient body of probative material where it is alleged that a large number of parties have recently commenced acting in concert.”*
29. We consider that the number of individual shareholders who the Applicant submitted were associated pursuant to the April Notices and the August Notices (being 20 in total) made it challenging for the Applicant to provide material to demonstrate, and for us to find, an association between all (or even some) of them.<sup>11</sup>
30. In *Aguia Resources Limited*,<sup>12</sup> the Panel stated that (footnotes omitted):
- “A contravention of the substantial holding provisions alone can give rise to unacceptable circumstances. However, it may be less likely to be in the public interest to intervene in a board dispute and make a declaration of unacceptable circumstances on a contravention of the substantial holding provisions alone if it is not material or where the market is not misinformed.”*
31. We expect that where shareholders together sign a requisition notice, they will also lodge a substantial holder notice to ensure the market is adequately informed. Here, we did note that no substantial holder notice was lodged at or around the time of the notices. However, this disclosure issue did not take us very far given the signatories were disclosed in the notice of meeting<sup>13</sup> and the market was accordingly informed.
32. We also consider that the alleged common objective of the Alleged Associates, namely the removal of the Applicant from the board of Cyclone, was unlikely to have an effect on the control, or potential control, of Cyclone given:

---

<sup>9</sup> See paragraph 20

<sup>10</sup> [2019] ATP 13 at [24(b)], citing *Mount Gibson Iron Limited* [2008] ATP 4 at [15] and *Auris Minerals Limited* [2018] ATP 7 at [20]

<sup>11</sup> See also *Tissue Repair Ltd* [2024] ATP 20 at [33]

<sup>12</sup> [2019] ATP 13 at [24(g)], citing *Caravel Minerals Limited* [2018] ATP 8 at [50] and *Auris Minerals Limited* [2018] ATP 7 at [23] – [24]. There are rare cases where the Panel may intervene in a board spill where there is no material suggesting a contravention of section 606 and substantial holding provisions but there is a bid or proposed bid on foot (see *IFS Construction Services Limited* [2012] ATP 15)

<sup>13</sup> See section 3.1 of the notice of meeting dated 11 September 2025

## Takeovers Panel

### Reasons - Cyclone Metals Limited [2026] ATP 2

- (a) it only affected one of four Cyclone board members and
  - (b) the Applicant had already agreed to resign following Cyclone's 2025 annual general meeting (see paragraph 7).
33. Therefore we are not satisfied that, on the materials provided, there is a compelling case that goes beyond collective action aiming at enhancing corporate governance.<sup>14</sup>
34. For these reasons, we consider that:
- (a) The applicant did not demonstrate a sufficient body of material to warrant us making further enquiries on the allegation of an association between the Alleged Associates.
  - (b) Even if the allegations were made out, we were not satisfied that there was a reasonable prospect that we would make a declaration of unacceptable circumstances including because the circumstances did not appear to have an effect on the control, or potential control, of Cyclone.
  - (c) It was unlikely, in the circumstances, to be in the public interest for us to intervene with regards to the lack of substantial holder notice.

#### Timeliness of application

35. The Applicant submitted that the "*Application relates to a number of events culminating in the [EGM] which, when considered in aggregate, give rise to unacceptable circumstances the subject of this Application. Accordingly, the Applicant submits that the relevant date for the purposes of section 657C(3) is the date of the Meeting, being 21 October 2025.*"
36. In *Aguia Resources Limited*,<sup>15</sup> the Panel stated that "[a] delay in making an application in the context of a requisitioned meeting may increase the Panel's reluctance to interfere with the legitimate right of shareholders to exercise voting rights."
37. In our view, the Applicant could have raised its allegations of association earlier than 19 December 2025, the date of the application.
38. On that basis, we consider that the application was not timely, noting that the alleged undisclosed association first arose in March 2025, approximately 9 months before the Applicant made the application and that, at the latest, the August Notices were relevant circumstances.
39. Given we decided not to conduct proceedings, we did not (and did not need to) determine whether or not to extend time under section 657C(3)(b).

#### DECISION

40. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

---

<sup>14</sup> ASIC Regulatory Guide 128: Collective action by investors

<sup>15</sup> [2019] ATP 13 at [24(h)], citing *Australian Whisky Holdings Limited* [2019] ATP 12 at [24]-[26]

## **Takeovers Panel**

**Reasons - Cyclone Metals Limited  
[2026] ATP 2**

### **Orders**

41. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

**Bruce Cowley**

**President of the sitting Panel**

**Decision dated 12 January 2026**

**Reasons given to parties 30 March 2026**

**Reasons published 2 April 2026**

## Takeovers Panel

Reasons - Cyclone Metals Limited  
[2026] ATP 2

### Advisers

Party	Advisers
Antony William Paul Sage	Lavan