Australian Government

Takeovers Panel

Reasons for Decision
Skin Elements Limited
[2026] ATP 10

Catchwords:

Decline to conduct proceedings – association – board spill – placement – undertaking

Corporations Act 2001 (Cth), sections 12, 16(1)(a), 201A(2), 249D(5), 606, 608(1)(c), 657C, 657E(1)(a)

Guidance Note 1: Unacceptable Circumstances

ASIC Regulatory Guide 128: Collective action by investors

ASIC v NRMA Ltd [2002] NSWSC 1135, Guss v Veenhuizen [1976] HCA 25

Emu NL [2025] ATP 11, Sequoia Financial Group Limited [2024] ATP 14, Accelerate Resources Limited 01 & 02 [2020] ATP 7, Accelerate Resources Limited 02 (Consent to Review of Interim Orders) [2020] ATP 5, Aurora Absolute Return Fund [2019] ATP 14, Aguia Resources Limited [2019] ATP 13, Auris Minerals Limited [2018] ATP 7, Resource Generation Limited [2015] ATP 12, Dragon Mining Limited [2014] ATP 5, Mount Gibson Iron Limited [2008] ATP 4, ISIS Communications Ltd [2002] ATP 10

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

INTRODUCTION

1. The Panel, Marina Kelman, Jeremy Leibler (sitting President) and Christopher Stavrianou, accepted an undertaking and declined to conduct proceedings on an application by Skin Elements Limited in relation to its affairs. The application concerned an alleged association in the context of upcoming board spill meetings. One of the alleged associates was the lead manager to a placement conducted by the company in late 2025 and entered into subscription agreements with placement investors which included a prohibition on transferring or dealing with placement shares without its consent. That party gave an undertaking to (in summary) not enforce or exercise its rights under the relevant clause of the subscription agreements and to notify each placement investor of their release from that clause. The Panel considered that the applicant had not provided a sufficient body of material to justify the Panel making further enquiries and that, in light of the undertaking, there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

62 Capital	62 Capital Pty Ltd
Alleged Voting & Disposal Restriction Agreements	means the "Voting & Disposal Restriction Agreements" described in paragraph 23(a)

KG Venture Holdings	KG Venture Holdings Pty Ltd
Kingsbury Controllers	has the meaning given in paragraph 11(b)
Kingsbury Wealth	Kingsbury Wealth Pty Ltd as trustee for the Kingsbury Investments Unit Trust
Kobala Investments	Kobala Investments Pty Ltd as trustee for Fernando Edward Family Trust
Peries	Gorakanage Peries as trustee for The Peries Family Trust
Placement	has the meaning given in paragraph 5
Skin Elements or the Company	Skin Elements Limited
Sovereign Equities	Sovereign Equities Pty Ltd as trustee for the Equities Trust and Equity Services Pty Ltd
Subscription Agreements	has the meaning given in paragraph 29
Tarrod Investments	Tarrod Investments Pty Ltd as trustee for Tarrod Investments Trust

FACTS

3. Skin Elements is an ASX-listed research and development company of natural alternatives to chemical products (ASX code: SKN).

4. The directors of Skin Elements are Mr Peter Malone (Chairman), Mr Alex Poulsen, Mr Joshua Gordon, Mr Roderick Nicholas, Mr Brett Fraser, Mr Robin Armstrong and Mr Stuart Usher.[1]

5. On 15 October 2025, Skin Elements announced a $2.5 million two-tranche private placement (**Placement**) to professional and sophisticated investors at $0.002 per share, together with one free attaching unquoted option for every two shares issued (exercisable at $0.006 and having an expiry date three years from date of issue). The announcement stated that 62 Capital acted as sole lead manager to the Placement and that 62 Capital "*has also warranted in favour of the Company that no Investor is currently an associate (as that term is defined in the Corporations Act) of any other Investor*".

6. Of the 1,250,000,000 Placement shares (which represented approximately 116% of the Skin Elements shares on issue as at the announcement of the Placement), 157,500,000 shares were issued on 17 October 2025 and the remaining 1,092,500,000 shares were issued on 12 December 2025. All 625,000,000 Placement options were issued on 12 December 2025. Skin Elements also issued 75,000,000 shares and 37,500,000

[1] As at the date of the application

options to 62 Capital as consideration for the lead manager services on 18 December 2025.

7. Approximately 20 investors participated in the Placement, including Mr Sufian Ahmad, Kingsbury Wealth, Tarrod Investments, Peries, Kobala Investments, KG Venture Holdings, Mr Joshua Gordon, Mr David Dominic Pevcic and Mr Michel Elkhoury.

8. Mr Ahmad is the sole shareholder and a director of 62 Capital.

9. Mr Roderick Nicholas is the sole director of Kingsbury Wealth and the sole director and shareholder of Tarrod Investments. Tarrod Investments and Peries each hold 50% of the shares in Kingsbury Wealth.

10. On 1 January 2026, Mr Ahmad lodged an initial substantial holder notice disclosing a relevant interest as the holder of 292,500,000 Skin Elements shares and voting power of 9.67%.

11. On 16 February 2026, Kingsbury Wealth lodged an initial substantial holder notice disclosing:

    (a) a relevant interest in respect of Kingsbury Wealth as the holder of 222,650,000 Skin Elements shares and voting power of 7.36%

    (b) a relevant interest in respect of each of Tarrod Investments, Peries and Kobala Investments pursuant to section 608(3)[2] by reason of having control of Kingsbury Wealth (together, the **Kingsbury Controllers**)

    (c) that, of the 222,650,000 shares held by Kingsbury Wealth, 200,150,000 shares were acquired pursuant to off-market transfers from the Kingsbury Controllers for nil consideration on 16 February 2026[3] and

    (d) that the Kingsbury Controllers are associates of Kingsbury Wealth as follows:

> "*[F]or the purposes of sections 12(2)(c) and 15 of the Corporations Act because they have an informal understanding to act, and are acting (or proposing to act), in concert in relation to the Shares held by Kingsbury, including to control or influence the exercise of voting power attaching to those Shares, including in relation to corporate governance matters (including the composition of the board of directors) of Skin Elements Limited. There is no written agreement.*"

[2] 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)
[3] Skin Elements submitted that these shares were originally issued to the Kingsbury Controllers under the Placement

12. On 24 February 2026, Skin Elements announced that Mr Nicholas and Mr Gordon had been appointed as directors and that Mr Stuart Usher had retired as a director, each effective that day.[4]

13. On 2 April 2026, Kingsbury Wealth issued a section 249D notice seeking to remove Mr Giglia as a director.[5]

14. On 14 April 2026, Sovereign Equities issued a section 249D notice seeking to remove each of Mr Nicholas and Mr Gordon as directors.

15. Also on 14 April 2026, Kingsbury Wealth issued a section 249D notice seeking to remove Mr Malone as a director.

16. On 22 April 2026, Skin Elements released a notice of extraordinary general meeting of shareholders scheduled for 11.00am (Perth time) on 2 June 2026 (**2 June EGM**) to consider each of the resolutions the subject of the section 249D notices of 2 and 14 April 2026. Kingsbury Wealth's section 249P statement attached to the notice of meeting stated (among other things) that:

> "***The Requisitioning Shareholder has requisitioned a meeting… because, in its opinion, SKN requires an immediate reset in governance, oversight, management and capital discipline to protect and rebuild shareholder wealth.***
>
> *Since listing in 2017…* ***SKN's share price has declined*** *from* ***$0.20*** *to approximately* ***$0.005*** *per share (****down 98%****), while accumulated losses increased from* ***$234,367 (30 June 2016)*** *to* ***$28.1 million (30 June 2025)***
>
> …
>
> *In the opinion of the Requisitioning Shareholder, this sustained value destruction raises serious concerns regarding Board oversight, accountability, capital allocation and the ability of the Board to execute an effective strategy to generate shareholder value…*"

17. Also on 22 April 2026, Skin Elements announced that it had appointed Mr Usher, Mr Brett Fraser and Mr Robin Armstrong as directors "*to ensure that the Company has at least three directors at the end of the [2 June EGM]*".[6]

18. On 23 April 2026, Kingsbury Wealth issued a section 249D notice seeking to remove each of Mr Usher, Mr Fraser and Mr Armstrong as directors and to appoint three nominees of Kingsbury Wealth (Mr Frank Knezovic, Mr Gorakanage Peries and Mr Harry Spindler) as directors.

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[4] Skin Elements submitted that each of Kingsbury Wealth and Mr Nicholas and Mr Gordon had earlier in 2026 "demanded" the appointment of each of Mr Nicholas and Mr Gordon as directors and the resignation of Mr Usher as a director under threat of requisitioning a general meeting, and that in order to avoid the cost and disruption of the proposed shareholders' meeting, and on the basis that Skin Elements considered that Mr Nicholas and Mr Gordon may be beneficial to Skin Elements and its shareholders, Skin Elements agreed to appoint each of Mr Nicholas and Mr Gordon as a director and Mr Usher agreed to resign

[5] This and the other section 249D notices referred to in the Facts were preceded by section 203D notices

[6] See section 201A(2)

19. On 14 May 2026, Skin Elements released a notice of extraordinary general meeting of shareholders scheduled for 23 June 2026 to consider each of the resolutions the subject of the section 249D notice of 23 April 2026.

20. On 18 May 2026, Skin Elements received emails from certain Placement investors requesting the exercise of options and attaching executed option exercise forms, as follows:[7]

    (a) Kobala Investments seeking to exercise 44,000,000 options

    (b) KG Venture Holdings seeking to exercise 10,000,000 options

    (c) Mr Ahmad seeking to exercise 16,000,000 options

    (d) Mr Pevcic seeking to exercise 15,000,000 options[8] and

    (e) Mr Elkhoury seeking to exercise 10,000,000 options.

21. On 21 May 2026, Skin Elements sent an email in response to each of the exercising optionholders noting that "*SKN is concerned that if it were to issue shares to you in accordance with the option exercise form, you would be in breach of the takeovers prohibition in Chapter 6*" and asking each to "*confirm and provide evidence to the company that you do not have any agreement, arrangement or understanding with any other shareholder of SKN*".

22. On 24 May 2026, Kobala Investments and KG Investments each sent emails in response to Skin Elements to the effect that they objected to the refusal to process the exercise of their options.

APPLICATION

23. By application dated 25 May 2026, Skin Elements sought a declaration of unacceptable circumstances, submitting (among other things):

    (a) "*[T]he Company understands that 62 Capital entered into an agreement with each Placement Investor which sets out restrictions in respect of the exercise of voting rights and disposal rights of the Shares and Options issued to each Placement Investor, including regarding controlling and influencing composition of the Board (**Voting & Disposal Restriction Agreements**).*

    While the Company does not currently hold copies of the Voting & Disposal Restriction Agreements, it is aware of their existence and the broad terms through one of the Company's employees, Mr Ahmed Wahid, being shown the Voting & Disposal Restriction Agreement by a shareholder, Mr Mohamed Iffam Samidon….

    … Mr Wahid told Mr Samidon that the Company required capital, following which Mr Samidon introduced 62 Capital to the Company.

    Mr Samidon was transferred 12,500,000 Shares from the Peries Trust on 18 December 2025. Mr Samidon told Mr Wahid that on receiving these Shares, he signed a Voting &

[7] In each case the number of options sought to be exercised corresponds to the number of Skin Elements shares which would be issued on exercise of those options

[8] On 27 May 2026, Mr Pevcic lodged an initial substantial holder notice disclosing a relevant interest as the holder of 187,500,000 Skin Elements shares and voting power of 6.1%

Disposal Restriction Agreement with 62 Capital and that his shares were unable to be transferred without 62 Capital's approval for a period of two years. Upon receiving this information, Mr Wahid informed the Company.

The Company has contacted Mr Samidon who has refused to provide a copy as he says he has been told by 62 Capital to not share a copy of his Voting & Disposal Restriction Agreement with the Company."

(b) 62 Capital, Mr Nicholas and each Placement investor have:

(i) as the Company understands, entered into agreements, arrangements or understandings in relation to the affairs of the Company, such that they have a relevant interest in the 1,325,000,000 Placement shares held by 62 Capital and the Placement investors, which amounts to 43.14%[9] of the shares on issue for the purposes of section 608(1) and

(ii) are acting in concert such that they are associates of each other for the purposes of section 12(2)(b) and section 12(2)(c)

(c) if each Alleged Voting & Disposal Restriction Agreement is on the terms that the Company understands it to be, 62 Capital and each Placement investor are in breach of the 20% prohibition in section 606(1) and have failed to disclose their substantial holding in the Company in breach of section 671B(1) and

(d) the contraventions mean that each of the upcoming extraordinary general meetings will not take place in an efficient, competitive and informed market in accordance with section 602(a) and that shareholders will be denied information contrary to section 602(b).

24. Skin Elements sought interim orders requiring disclosure of the Alleged Voting & Disposal Restriction Agreements and if necessary to allow the Panel time to conduct proceedings, an interim order to adjourn the 2 June EGM.

25. Skin Elements sought final orders, including orders to the following effect:

(a) requiring disclosure of the alleged associations and combined voting power

(b) preventing the alleged associates from exercising any voting rights in excess of 20% for a 12-month period commencing from the 2 June EGM

(c) declaring that the Alleged Voting & Disposal Restriction Agreements have no effect and are unenforceable and

(d) preventing the alleged associates (and/or any person to whom those persons transfer their shares within a 12-month period) from seeking to remove or appoint a director of Skin Elements.

[9] Skin Elements further submitted that if it were to issue shares to the exercising optionholders on exercise of their options, the Skin Elements shares held by 62 Capital and the Placement investors would amount to 43.79% of the shares on issue

DISCUSSION

26. We have considered all the material before us but address specifically only the material we consider necessary to explain our reasoning.

Request for further information and Subscription Agreements

27. To facilitate our consideration of the interim orders request on an expedited basis (noting the 2 June EGM was due to occur approximately 1 week after receipt of the application), the President requested further information from interested persons, including to invite submissions regarding whether the interim orders should be made and to request that 62 Capital provide copies of any agreements it entered into in connection with the Placement in respect of the exercise of voting rights or disposal rights concerning Placement securities.

28. As part of Kingsbury Wealth's submission that we should not make either of the interim orders requested, it provided copies of statutory declarations signed by Messrs Wahid and Samidon, each to the effect that the statements in the application attributed to Mr Samidon[10] were incorrect. Mr Samidon also declared that:

    (a) On or around 18 December 2025, 12,500,000 Skin Elements shares were transferred to him from Peries in an "*arm's length transaction executed by [him] as an independent commercial investment*".

    (b) He has never entered into an agreement, arrangement or understanding with 62 Capital regarding the exercise of voting rights, control over the composition of the Company's board or the disposal of his shares.

    (c) His shares are completely unencumbered and are not subject to any approval from 62 Capital or any other third party for transfer or disposal.

29. 62 Capital submitted that it had not entered into any agreement known as a "Voting & Disposal Restriction Agreement" or any other agreements in connection with the Placement in respect of the exercise of voting rights or disposal rights concerning Placement securities, but noted it had entered into subscription agreements (in the form of offer letters and acceptances) with Placement investors (**Subscription Agreements**), copies of which it provided.

30. Clause 7 of the Subscription Agreements stated as follows:

> "*The allocation of Placement Shares to you and the agreement arising from confirmation of the Firm Commitment is personal to you and does not constitute an offer to any other person or to the public generally in Australia or anywhere else. You may not assign, transfer, or in any other manner, deal with your Placement Shares, or your rights or obligations under the agreement arising from the confirmation of the Firm Commitment without the prior written agreement of 62 Capital in accordance with all relevant legal requirements. …*"

31. 62 Capital acknowledged that "on its face" clause 7 of the Subscription Agreements includes a prohibition on transferring or dealing with Placement shares without the

[10] See paragraph 23(a) above

prior agreement of 62 Capital but submitted that read in context this is not a restriction on disposal of Placement securities in any relevant sense. It further submitted:

(a) The purpose of the clause is to make it clear that the allocation of Placement shares is personal to the named offeree and the offeree is not permitted to circumvent this important principle by transferring rights under the offer.

(b) The clause does not operate, on its proper construction, as a restriction on disposal of securities once the Placement shares have been issued; the reference to "in accordance with all relevant legal requirements" makes this very clear.

(c) Applying a broader operation to this clause would be entirely inconsistent with other provisions of the Subscription Agreements.[11]

(d) 62 Capital has never considered this clause to be a prohibition on the disposal of Placement shares in the normal course and has never enforced, or threatened or purported to enforce, this clause with any such broader effect.

32. In our experience, it would be unusual for a subscription agreement of this nature to restrict ongoing dealing in the relevant shares after they have been issued. However, if clause 7 of the Subscription Agreements does operate as a continuing restriction on the transfer or disposal of Placement shares post-issue (which was unclear to us on the face of the document), it may give rise to concerns under Chapters 6 and 6C, including as to whether 62 Capital has a relevant interest in those shares.[12] However, having regard to the submissions received from 62 Capital and the context in which the Subscription Agreements were entered into, we were inclined to the view that clause 7 was not intended to have that effect.

33. In Guidance Note 1: Unacceptable Circumstances, it is noted that an honest and accidental contravention of section 606 may not be unacceptable if it has not had any relevant adverse effect, with a reference to *ISIS Communications Ltd.*[13] In that matter, the effect of certain clauses in a sale agreement gave a party additional voting power in Isis Communications Ltd shares resulting in a possible contravention of section 606. However, the evidence did not support a conclusion that the agreement had caused unacceptable circumstances. The Panel took into account the party's assertions that any offensive parts of the agreement were inadvertent and unintended, the fact of the party quickly and voluntarily deleting the relevant clauses when the issues were formally brought to its attention, and the evidence presented that the party had been operating on the basis that the counterparty had been free to deal with the shares in question.[14]

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[11] 62 Capital made reference to (among other provisions) clause 6 which set out various risks including "*…low trade volumes which may result in the stock being illiquid and when you go to sell your stock there may not be sufficient volumes at the price you want…*"
[12] See section 608(1)(c)
[13] [2002] ATP 10
[14] [2002] ATP 10 at [66]-[67]

34. We considered that there are some parallels between *ISIS Communications Ltd* and the present circumstances, noting that 62 Capital did not interpret clause 7 of the Subscription Agreements as restrictive and had not sought to enforce clause 7 (this is supported by the fact that Mr Samidon was transferred shares in Skin Elements from Peries, one of the Placement investors[15]).

35. We considered that obtaining an undertaking from 62 Capital to not enforce or exercise its rights under clause 7 of the Subscription Agreements and to notify promptly each Placement investor of their release from that clause would adequately address our concerns in relation to the Subscription Agreements. 62 Capital agreed to provide such an undertaking (Annexure A).

Alleged association

36. In considering whether to conduct proceedings on the question of whether shareholders are associated in the context of a board spill, the Panel applies 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.[16] The Panel has observed that 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.[17] The Panel has also observed that the ability of shareholders to hold a company to account for its performance is important in keeping directors accountable and can enhance long-term performance.[18]

37. Skin Elements submitted that in discussions with Skin Elements prior to becoming shareholders each of Kingsbury Wealth, Tarrod Investments and Messrs Nicholas and Gordan expressed strong support for Skin Elements' strategy, projects and incumbent Board and confirmed that they did not propose to make any changes to Skin Elements' projects, plans or strategic direction or the composition of the Board and Skin Elements' management personnel; however, as soon as each of Messrs Nicholas and Gordon were appointed as a director, they made the following requests (which were rejected by the Company):

    (a) to immediately terminate all of the Company's contracts with its executive team and operational employees

    (b) to cease all of its R&D activities, including its research, development and commercialisation of the Company's products

    (c) to immediately terminate all of the Company's contracts with its accounting and company secretarial service entities, and replace them with service providers proposed by them and

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[15] See paragraph 28 above
[16] *Aguia Resources Limited* [2019] ATP 13 at [24(b)] citing *Mount Gibson Iron Limited* [2008] ATP 4 at [15]
[17] *Aguia Resources Limited* [2019] ATP 13 at [24(b)] citing *Auris Minerals Limited* [2018] ATP 7 at [20]
[18] *Aguia Resources Limited* [2019] ATP 13 at [23] citing ASIC Regulatory Guide 128: Collective Action by Investors at RG128.1

(d) to immediately remove all of the Company's existing bank authorities and controls, and appoint each of Messrs Nicholas and Gordon as signatories on the bank accounts.[19]

38. Skin Elements went on to submit that "*immediately following the Board rejecting each of the above requests on the basis that they were not in the best interests of Shareholders*", Kingsbury Wealth issued its section 249D notice on 2 April 2026. Skin Elements suggested that this is similar to the circumstances in *Resource Generation Limited*,[20] where the Panel found that two Resource Generation Limited shareholders, in the context of a full board spill, were associated for the purpose of controlling or influencing the composition of the company's board and made a declaration of unacceptable circumstances and orders requiring disclosure of the association. Skin Elements made particular reference to the Panel's comments at [98] that "*[a]fter having their requests for board representation rebuffed, the requisition of a meeting was a logical next step*".

39. Skin Elements also submitted that each of Messrs Nicholas and Gordon "*consistently voted against each resolution proposed to the Board, including the Board resolutions for the appointment of each of Messrs Usher, Fraser and Armstrong as a Director, notwithstanding the risk to the Company that if all of the resolutions at the First Meeting are passed, the Company would not be in compliance with its statutory obligations to have at least three directors*".

40. It does appear that once appointed as directors Messrs Nicholas and Gordon had strong views regarding the affairs of the Company, and we agree with Skin Elements that, by analogy, having had their views 'rebuffed' that seeking to spill the remainder of the board may have been a 'logical next step'. Voting consistently on board resolutions may also indicate the two directors are aligned but we don't take much from their voting against a resolution to appoint three additional directors to the board in the face of Kingsbury Wealth's section 249D notices of 2 and 14 April 2026.

41. In any event, the above submissions concerned only a small number of the alleged associates and we note that an association between Kingsbury Wealth and the Kingsbury Controllers had already been disclosed.[21] As set out in the application, Kingsbury Wealth has disclosed voting power of 7.36% in Skin Elements. The application did not refer to Mr Gordon's relevant interest in Skin Elements shares or voting power.[22]

42. Skin Elements further submitted that each of the five exercising optionholders had sent the email with their option exercise form to the Company within approximately three hours of each other with materially similar cover emails.[23]

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[19] This submission was not rebutted
[20] [2015] ATP 12
[21] See paragraph 11(d)
[22] Mr Gordon's initial director interest notice of 26 February 2026 disclosed that he is the registered holder of 32,500,000 Skin Elements shares and 16,250,000 options
[23] See paragraph 20

43. 62 Capital submitted that the fact that each optionholder exercised their options on the same day is not of itself evidence of an association among those optionholders, and that no additional probative material evidencing the existence of an association has been provided. It further submitted:

> "*62 Capital was consulted in its professional capacity by a number of option holders in relation to the exercise of their options. 62 Capital provided assistance with respect to the completion of exercise forms. This is neither surprising nor revealing, given 62 Capital's business and professional relationship with the Placement Investors. But 62 Capital was not involved in the decision by each option holder whether to exercise their options or how many options to exercise. So far as 62 Capital is concerned, each option holder made their decision independently of 62 Capital.*"

44. 62 Capital's submission provides some explanation as to why the cover emails from the exercising shareholders were similarly worded, but it provides less of an explanation as to the timing of the exercise of those options. However, noting 62 Capital's relationship with the Placement investors (as submitted by 62 Capital) and that its role appeared to be limited to assisting optionholders with queries in relation to, and completion of, their election forms, we did not consider that the similarities between and timing of the option exercise communications, in the absence of material suggesting communications about voting, board control or the number of options to be exercised, warranted making further enquiries.[24]

45. It appeared that Skin Elements was asserting a "hub and spoke" style of association with 62 Capital at the centre.[25] However, other than the option exercise communications and the Subscription Agreements, we considered that there was a lack of material before us connecting 62 Capital to the other persons in the alleged associate group including the requisitioning shareholder Kingsbury Wealth (or Mr Nicholas or the Kingsbury Controllers). 62 Capital submitted that it was not involved in the issuing of the various notices in connection with the requisitioned meetings. We also note Mr Samidon's statutory declaration referred to above denying that he entered into any agreement, arrangement or understanding with 62 Capital.[26] Similar submissions were received from Mr Gordon and Kobala Investments (albeit not in the form of a statutory declaration).

46. As stated in *Dragon Mining Limited*,[27] the Panel recognises the difficulties an applicant faces in gathering evidence in association matters. However, the Panel has limited investigatory powers and an applicant must do more than merely make allegations of association and rely on the Panel to substantiate them.[28]

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[24] We note that under section 16(1)(a), a person is not an associate of another person merely because one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship

[25] See *Aurora Absolute Return Fund* [2019] ATP 14 at [49]-[50]; *Emu NL* [2025] ATP 11 at [36]

[26] See paragraph 28(b)

[27] [2014] ATP 5 at [60]

[28] *Dragon Mining Limited* [2014] ATP 5 at [60]

47. Overall, we considered that Skin Elements fell short of providing a sufficient body of material to warrant further investigation.

Requested deferral of meeting beyond statutory timeframe

48. Skin Elements flagged in connection with its interim orders request that any adjournment of the 2 June EGM would result in it breaching section 249D(5).

49. In *Accelerate Resources Limited 02 (Consent to Review of Interim Orders)*,[29] it was noted that it is "doubtful" that the Panel has the power to defer a section 249D meeting beyond two months, with reference to the following passage of Windeyer J in *ASIC v NRMA Ltd*:[30]

> "*The simple argument of ASIC is that "held" means a meeting commenced and concluded. The simple argument of NRMA is that "held" means duly convened and commenced and lawfully adjourned or at least includes such a meeting. The ASIC argument relies on the ordinary meaning of the word. It is a verb of past tense or a past participle. But people often refer to matters in progress such as continuing court actions as being held before a particular judge. In that case, however, "being" involves continuing. The NRMA says that it could not have been the intention to abrogate the power to adjourn a meeting so as to make it a requirement to complete a requisitioned meeting within the stipulated time. Without going to authority I would have considered that the ordinary meaning of "held" in s249D(5) requires completion and does not allow adjournment outside the statutory date, unless by order of the court. The clear intention is to require the resolution proposed to be dealt with within a limited time which intention would be abrogated if the chairman could exercise his power of adjournment to fix some future time which time would presumably have to be fixed by him or by the directors. This is particularly so when the resolutions would determine the future of directors.*"

50. Skin Elements was referred to this issue as part of the President's request for further information. In response, it submitted that the wording used by Windeyer J in his reasoning that this requirement applies "*unless by order of the court*" should not be considered to mean that "*a court order is the only exception to the requirement (noting that the court naturally was discussing its own power in court proceedings)*". Skin Elements further submitted (among other things) that a specific order by the Panel, as the specialist peer review body for resolving disputes in takeovers, would also be an exception to the requirement in section 249D(5), and that the discussion by Windeyer J is not in any way limiting of the Panel's power under section 657E(1)(a) to defer a section 249D meeting. It drew an analogy to the case where the Panel issues an order to defer statutory timeframes as part of a takeover bid, for example, the requirement that dispatch of a bidder's statement needs to occur between 14 and 28 days after the bidder's statement is first served on the target company.

51. In light of our decision to decline to conduct proceedings, we decided not to make interim orders and hence did not consider this issue further. However, we

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[29] [2020] ATP 5 at [30]. See also *Accelerate Resources Limited 01 & 02* [2020] ATP 7 at [28]
[30] [2002] NSWSC 1135 at [12]. See also *Guss v Veenhuizen* [1976] HCA 25, to which Windeyer J referred

encourage parties applying to the Panel for a deferral of a section 249D meeting beyond the 2 month statutory timeframe to carefully consider the relevant authorities and/or consider making a prior application to the court for such a deferral or other practical alternatives which may achieve similar outcomes such as vote tagging.[31]

Extension of time

52. Skin Elements submitted that to the extent the circumstances giving rise to the application arose in December 2025 it was seeking an extension of time for the purposes section 657C(3)(b) noting that it only became aware of the Alleged Voting & Disposal Restriction Agreements "within the last three weeks".

53. Having regard to our decision, we do not consider it necessary to reach a view on whether to formally extend time for the making of the application.

Other matters

54. We note that Kobala Investments submitted (among other things) that "*SKN's continued refusal to allot, in the absence of any proper Chapter 6 basis, has deprived [it] of [its] contractual entitlement and the voting rights attaching to those shares in advance of the 2 June 2026 EGM*" and "*serves the incumbent directors' interest in the EGM outcome*". Kobala Investments requested that orders be made to remedy the "*unacceptable circumstances arising from SKN's continuing refusal to allot*".

55. In addition, Kingsbury Wealth submitted that Sovereign Equities is an entity connected to the incumbent Skin Elements' board and is designed to "interfere" with the Kingsbury requisitions. It further submitted in the event that the interim order adjourning the 2 June EGM is not made, the Panel should put protections in place to ensure the process is not "frustrated" by executive management.

56. We were of the view that it was not appropriate for us to consider either of these requests in this matter, noting in respect of each of them that a separate application can be brought concerning the alleged conduct if warranted.

57. We also note that following our circulation of the Undertaking in draft form on 1 June 2026, Skin Elements submitted that the Undertaking serves limited utility for the purposes of the 2 June EGM on the basis that it applies on and from the date of the Undertaking, noting that a significant number of Skin Elements shareholders had already appointed a proxy and specified their voting preferences for the meeting and accordingly the Undertaking will not change the votes of those shareholders.[32] Our concern in relation to Clause 7 of the Subscription Agreements was directed to any restriction or potential restriction on transfer or disposal of Placement shares rather than voting of Placement shares, and we considered that the material did not establish that Clause 7 of the Subscription Agreements had operated as a voting restriction.

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[31] See e.g. *Accelerate Resources Limited 01 & 02* [2020] ATP 7; *Sequoia Financial Group Limited* [2024] ATP 14
[32] Skin Elements did not provide any documents evidencing proxy voting in relation to the 2 June EGM

DECISION

58. 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).

Jeremy Leibler
President of the sitting Panel
Decision dated 1 June 2026
Reasons given to parties 3 July 2026
Reasons published 10 July 2026

Advisers

Party	Advisers
Skin Elements Limited	Piper Alderman
62 Capital Pty Ltd	Allens
Kingsbury Wealth Pty Ltd	-

Australian Government
Takeovers Panel

Annexure A

SECTION 201A
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT (CTH)
UNDERTAKING

SKIN ELEMENTS LIMITED

1. 62 Capital undertakes to the Panel that it will:

   (a) not enforce or exercise its rights under Clause 7 (Allocation Personal – Placement Shares) of the Subscription Agreements and thus is taken to have waived its powers or rights under that clause on and from the date of this undertaking for the purposes of Clause 8(c) (General) of the Subscription Agreements and

   (b) as soon as practicable, write to each Placement Investor stating that Placement Investors are released from Clause 7 (Allocation Personal – Placement Shares) of the Subscription Agreements.

2. 62 Capital will:

   (a) do all things necessary to give effect to this undertaking and

   (b) confirm in writing to the Panel when it has satisfied its obligations under Clause 1(b) of this undertaking.

In this undertaking the following terms have their corresponding meaning:

62 Capital	62 Capital Pty Ltd
Placement	The two-tranche private placement to professional and sophisticated investors announced by SKN on 15 October 2025 to raise $2.5 million (before costs) through the issue of: • 1,250,000,000 shares at $0.002 per share and • one unlisted option for every two shares issued (totalling 625,000,000 unlisted options), each to acquire one share at an exercise price of $0.006.
Placement Investors	Each investor that was issued securities under the Placement.

SKN	Skin Elements Limited (ASX: SKN)
Subscription Agreements	The subscription agreements (in the form of offer letters and acceptances) entered into between 62 Capital (as lead manager) and each Placement Investor in connection with the Placement.

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Signed by Sufian Ahmad of 62 Capital Pty Ltd
with the authority, and on behalf, of
62 Capital Pty Ltd
Dated 1 June 2026