



Australian Government

Takeovers Panel

Guidance Note 4 - Remedies General

Background	1
Interim orders	2
Declaration of unacceptable circumstances	3
Final orders	4
Costs orders.....	7
Undertakings	11
Other outcomes	12
Publication History	14
Related material	14

Background

1. This guidance note has been prepared to assist market participants understand the Panel's approach to remedies. The examples are illustrative only and nothing in the note binds the Panel in a particular case.¹
2. This guidance note is also designed to ensure that Panel applications are "*resolved as quickly and efficiently as possible by a specialist body largely comprised of takeover experts*"² and to help minimise conduct by parties or their legal advisers that may impede Panel proceedings (such as unnecessarily elongating proceedings by failing to answer questions

¹ Selected Panel decisions are cited in this guidance note. Please note that this is not intended to be exhaustive. For further examples, please refer to the Panel's Index of Reasons on its website

² Explanatory Memorandum, Corporate Law Economic Reform Program Bill 1998 at 37 [7.3]

directly or failing to produce documents or other materials when first requested to do so).

3. This guidance note is focussed on the Panel's power to make interim orders (section 657E³), declarations of unacceptable circumstances (section 657A) and final orders (including costs orders, section 657D). In relation to the Panel's power to review ASIC decisions under sections 656A and 656B, see Guidance Note 2: Reviewing Decisions.

Interim orders

4. The Panel or the President⁴ may make interim orders.⁵ They can be made in the absence of a declaration of unacceptable circumstances or even an application for a declaration.
5. Interim orders are usually made to prevent unacceptable circumstances from happening, continuing or getting worse while proceedings are conducted. They may be made to preserve the status quo until proceedings are completed. They may also be made to ensure that the Panel's power to fashion the most appropriate remedy in the circumstances is not forestalled by intervening events.
6. The Panel can make any order as an interim order that it can make as a final order (see paragraphs 14 to 26 below). However, interim orders cease to have effect at the earlier of the end of the period specified in the order (not to exceed two months) and the determination of the Panel's proceedings. The temporary nature of the order will factor into the type of order made.
7. Relevant factors for making an interim order include:
 - (a) whether the risk that unacceptable circumstances will occur, continue or worsen in the absence of an order outweighs the adverse effects of the order on the person to whom it is directed and the market⁶
 - (b) the strength of the evidence

³ All references are to the *Corporations Act 2001* (Cth) (**Corporations Act**) unless otherwise indicated

⁴ Before the Panel is appointed. All references to President are to the President appointed under section 173 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) or an Acting President appointed under section 182 of the ASIC Act (in circumstances when the President cannot act)

⁵ Section 657E

⁶ In cases where an interim order may significantly prejudice other parties, the Panel may consider whether the applicant is willing to give an undertaking to compensate for any losses incurred by parties if an interim order is made: see e.g. *Powerlan Limited* [2010] ATP 2 at [21]

- (c) whether the circumstances can be adequately remedied by final relief alone and
 - (d) the availability of alternative measures, such as undertakings.
8. In general, the Panel will not hold up a transaction by interim orders, unless mischief will occur that cannot conveniently be reversed by final orders.⁷

Example: Unless the information deficiencies are significant, it will usually be preferable to allow a bidder's statement to be dispatched pending a final decision on the alleged deficiencies (see Guidance Note 5: Specific Remedies – Information Deficiencies at [5]-[12]).

Declaration of unacceptable circumstances

9. The Panel may declare circumstances unacceptable in relation to the affairs of a company.⁸ This conveys the Panel's view that the circumstances are unacceptable and enables the Panel to make final orders.⁹ The following describes the Panel's process for making a declaration. For more information about the Panel's approach to making a declaration of unacceptable circumstances, see Guidance Note 1: Unacceptable Circumstances.
10. Before making a declaration, the Panel must give each party to the proceedings, each person to whom the proposed declaration relates and ASIC an opportunity to make submissions.¹⁰ The Panel informs the parties of its intention to make a declaration, inviting submissions on the draft document.
11. The Panel may at that stage be prepared to consider an undertaking proposed by a party to remedy the unacceptable circumstances, without the need for a declaration and orders. However, the Panel is more receptive to resolutions proposed by the parties if they are offered earlier in the process.¹¹

⁷ See e.g. *Village Roadshow Limited* [2004] ATP 4 at [94], *Gondwana Resources Limited 02* [2014] ATP 15 at [16] and [18], *Ambassador Oil and Gas Limited 02* [2014] ATP 17 at [12] and *Energy Resources of Australia Limited* [2019] ATP 25 at [53]-[55]

⁸ Section 657A

⁹ Section 657D(1). The Panel may make a declaration of unacceptable circumstances but no orders: see e.g. *BreakFree Limited 04* [2003] ATP 39, *BreakFree Limited 04(R)* [2003] ATP 42, *Summit Resources Limited* [2007] ATP 9 and *Pacific Smiles Group Limited* [2024] ATP 12. The Panel may also accept undertakings in lieu of orders: see e.g. *Gondwana Resources Limited* [2014] ATP 9, *Flinders Mines Limited 02 and 03* [2019] ATP 12 and *Montu Group Pty Ltd* [2024] ATP 25

¹⁰ Section 657A(4)

¹¹ See paragraph 40 below

12. Declarations are published in the Government Gazette.¹²
13. A copy of a declaration (and of the Panel's reasons for making it) must be given to each person to whom the declaration relates.¹³

Final orders

14. If the Panel makes a declaration of unacceptable circumstances, it may make orders:
 - (a) to protect rights or interests affected by the unacceptable circumstances or
 - (b) to ensure (as far as possible) that a bid proceeds as if the unacceptable circumstances had not occurred.¹⁴
15. Final orders to protect rights might include (for example) cancelling contracts,¹⁵ freezing transfers and/or rights attached to securities,¹⁶ forcing the disposal of securities¹⁷ and establishing rights to withdraw acceptances.¹⁸
16. Final orders to get the bid back on track might include (for example) allowing more time or information for shareholders to assess the merits of the proposal¹⁹ or establishing rights to withdraw acceptances.

¹² Section 657A(5)

¹³ Section 657A(6)

¹⁴ Section 657D(2). For a discussion of this section see *Eastern Field Developments Ltd v Takeovers Panel* [2019] FCA 311 at [132]–[152]

¹⁵ *Allegiance Mining NL* [2008] ATP 3; *Mount Gibson Iron Limited* [2008] ATP 4; *STI-Global Limited* [2013] ATP 12; *Accelerate Resources Limited 01 & 02* [2020] ATP 7; *Virtus Health Limited* [2022] ATP 5

¹⁶ *The President's Club Limited 02* [2016] ATP 1; *Merlin Diamonds Limited* [2016] ATP 18; *Southern Cross Media Group Limited 02R & 03R* [2023] ATP 15; *Sequoia Financial Group Limited* [2024] ATP 14

¹⁷ *Midwest Corporation Limited 02* [2008] ATP 15; *DataDot Technology Limited* [2009] ATP 13; *CMI Limited* [2011] ATP 4; *Affinity Education Group Limited* [2015] ATP 9; *Molopo Energy Limited 03R, 04R & 05R* [2017] ATP 12; *The Market Herald Limited* [2023] ATP 7

¹⁸ *Consolidated Minerals Limited 03R* [2007] ATP 28; *Firestone Energy Limited* [2013] ATP 4; *Ambassador Oil and Gas Limited 01* [2014] ATP 14; *Keybridge Capital Limited 04, 05 & 06* [2020] ATP 6; *Bullseye Mining Limited 03* [2022] ATP 4; *Bullseye Mining Limited 06* [2023] ATP 11. In *Goodman Fielder Limited* [2003] ATP 1 an undertaking (with ASIC relief) was accepted for offering of withdrawal rights. Similarly in *The Mildura Co-operative Fruit Company Limited* [2004] ATP 5 and *Pact Group Holdings Ltd* [2024] ATP 4

¹⁹ *NGM Resources Limited* [2010] ATP 11; *Firestone Energy Limited* [2013] ATP 4; *Bullseye Mining Limited 03* [2022] ATP 4; *Bullseye Mining Limited 06* [2023] ATP 11

17. The Panel's power to make orders is remedial in nature. However, an order may adversely affect a person, provided it is not unfairly prejudicial.²⁰
18. The Panel may make any final order that meets the description in paragraph 14 above. This includes remedial orders,²¹ and ancillary or consequential orders that it thinks appropriate.
19. The Panel may not make an order directing a person to comply with a requirement of Chapter 6, 6A, 6B or 6C.²²
20. The Panel considers that its power to make orders includes the power to make an order:
 - (a) that a person do something contrary to a relevant provision in the Corporations Act (for example, Chapter 6). The Panel does not consider that the power extends to making an order that a person do something contrary to another law (for example, the *Foreign Acquisitions and Takeovers Act 1975* (Cth)).²³ As part of their submissions on proposed orders parties should raise any such issues, in which case the Panel will consider how it might recast the order to avoid that issue or
 - (b) that affects property interests²⁴ or existing legal rights and obligations.²⁵
21. Before making final orders the Panel must:
 - (a) have made a declaration of unacceptable circumstances
 - (b) give each party to the proceedings, each person to whom the proposed order would be directed and ASIC an opportunity to make submissions. If there are identified persons or groups who may be affected, the Panel may seek their comments even if they are not parties. This may be done by inviting them to become a

²⁰ See section 657D(1)

²¹ Defined in section 9

²² Section 657D(2)

²³ See *Attorney-General (Cth) v Alinta Ltd* [2008] HCA 2 especially at [14] per Gummow J and [96] per Hayne J and *ASC v Bank Leumi Le-Israel (Switzerland)* (1996) 139 ALR 527 at 540–541. There may be limited other areas with a sufficient nexus to Chapter 6 that an order under section 657D also overrides that law. The party asserting this in a particular case would need to convince the Panel of it

²⁴ *AMP Shopping Centre Trust 02* [2003] ATP 24 at [38]–[41]

²⁵ *Pinnacle VRB Limited 11* [2001] ATP 23 at [28]; *Golden West Resources Limited 03 and 04* [2008] ATP 1 at [40]; *Golden West Resources Limited 04R* [2008] ATP 2 at [29]

party²⁶ or by allowing them to make a submission without becoming a party (the invitation may be by media release²⁷ or direct correspondence)

- (c) be satisfied that the order would not unfairly prejudice any person.²⁸ This involves consideration of the prejudice that different persons or groups may suffer by making or not making the order. In determining whether an order is unfairly prejudicial, it is appropriate for the Panel “to take into account the degree of culpability of persons whose interests are affected by the orders, including whether those persons have acted dishonestly or in a manner that can be characterised as reckless”²⁹ and
 - (d) consider that the proposed order protects rights or ensures that the bid proceeds as it should have (see paragraph 14 above).
22. In deciding what orders to make, the Panel considers how the order would promote the objectives set out in section 602 and whether the remedy is proportionate to the mischief.
23. Orders may be time sensitive. An order that is appropriate at the commencement of a matter may be inappropriate days later because the market has moved or third persons have changed their positions.
24. A copy of an order (and of the Panel’s reasons for making it) must be given to:
- (a) each party
 - (b) each person to whom the order is directed (if not a party)
 - (c) the company (if the order relates to its securities) and

²⁶ This was done in *AMP Shopping Centre Trust 01 and 02*. Not accepting an invitation until late in the proceedings may have costs implications: *AMP Shopping Centre Trust 01* [2003] ATP 21 at [117]

²⁷ *Australian Securities and Investments Commission Regulations 2001 (Cth) (ASIC Regulations)*, regulations 23 and 24 and see *BreakFree 04(R)* [2003] ATP 42 at [77]

²⁸ This may be described as the fairest order having regard to the various interests to be reconciled and the discretion to be exercised. Cases include *Gjergja & Atco Controls Pty Ltd v Cooper* [1987] VR 167, *ASC v Bank Leumi Le-Israel* (1995) 134 ALR 101 at 151–154, *ASIC v Yandal Gold Pty Ltd* (1999) 32 ACSR 317 at [117]–[169], *Flinders Diamonds Ltd v Tiger International Resources Inc* (2004) 88 SASR 281 at [63]–[79], *Glencore International AG v Takeovers Panel & Ors* (2005) 220 ALR 495 at [52]–[53] and *CEMEX Australia Pty Ltd v Takeovers Panel* (2008) 106 ALD 5 at [54]–[55]. As to balancing the rights of buyers and sellers on market, examples include *NCSC v Monarch Petroleum NL* [1984] VR 733 and *ASC v Mt Burgess Gold Mining Co NL* (1994) 62 FCR 389. As to the potential unfair prejudice of orders on market participants who are not parties, see *ASIC v Astra Resources Ltd (No 2)* (2016) 113 ACSR 162 at [254]

²⁹ *ASIC v Terra Industries Inc* (1999) 92 FCR 257 at [97(g)]. See also *ASIC v Yandal Gold Pty Ltd* (1999) 32 ACSR 317 at [142]

- (d) ASIC.³⁰
- 25. Orders are published in the Government Gazette.³¹ However, the order takes effect when made.
- 26. In the event of non-compliance with an order, the President, ASIC, a party or a person to whom the order relates may apply to the Court for an order to secure compliance.³² The Court may make any orders it considers appropriate to secure compliance with the Panel's order.

Costs orders

Power to order costs

- 27. The Panel only has power to order costs of parties if it has made a declaration.³³ It cannot order costs:
 - (a) to a successful respondent, even if it declines to conduct proceedings or because the application is frivolous or vexatious under section 658A(1)(a)
 - (b) if it finds unacceptable circumstances, but makes no declaration because it accepts an undertaking to remedy the circumstances
 - (c) to the Panel or non-parties or
 - (d) in an application under section 656A (review of ASIC's exemption or modification power).
- 28. Costs may be directed to be borne by a party or another person.³⁴
- 29. It may be appropriate to award costs to ASIC where it has participated as a party in an application under section 657C.

Considerations

- 30. The Panel's approach to costs orders is guided by the following considerations:
 - (a) the Panel's primary role is to resolve quickly and efficiently the real issues in the proceedings that come before it

³⁰ Section 657D(4)

³¹ Section 657D(4)

³² Section 657G

³³ Sections 657D(1) and 675D(2)(d). A costs order is a type of final order. The Panel has made cost orders, for example, in *Minemakers Limited* [2012] ATP 8, *Austock Group Limited* [2012] ATP 12, *Richfield International Limited* [2015] ATP 4 and *Thorn Group Limited 01 & 02* [2020] ATP 29

³⁴ For example, the directors or legal advisers of a party, see paragraph 35

- (b) a declaration relates to circumstances, not conduct, and may involve no finding of fault
 - (c) unlike the courts, costs orders do not follow to a 'successful' party as a matter of course and
 - (d) a party is entitled to make, or resist, an application once without exposure to a costs order, provided it presents a case of reasonable merit in a businesslike way.³⁵
31. Costs may be awarded against any party³⁶ if it:
- (a) presented a case that was not arguable, made misleading or unsubstantiated assertions,³⁷ was unnecessarily hostile, raised extraneous matters or defended circumstances that were clearly unacceptable³⁸
 - (b) delayed or obstructed proceedings (including unnecessarily elongating proceedings by failing to answer questions directly or failing to produce documents or other materials when first requested to do so),³⁹ abused the process⁴⁰ or unreasonably refused to negotiate⁴¹
 - (c) unreasonably delayed in becoming a party and providing relevant material⁴²
 - (d) sought an unmeritorious review⁴³ or put material before a review Panel that it failed to put before the initial Panel

³⁵ For examples of cases presented without reasonable merit see *Condor Blanco Mines Limited* [2016] ATP 8 at [85] and *The Market Herald Limited* [2023] ATP 7 at [324]. See also *Regal Resources Limited* [2016] ATP 17 at [71]-[72], *Merlin Diamonds Limited* [2016] ATP 18 at [154]-[155], *Molopo Energy Limited 03R, 04R & 05R* [2017] ATP 12 at [296]-[298] and *Keybridge Capital Limited 04, 05 & 06* [2020] ATP 6 at [140]

³⁶ Or a non-party that has participated in proceedings

³⁷ Includes reckless or deliberate misquoting of source documents

³⁸ *DRA Global Limited* [2022] ATP 16 at [155]-[159]

³⁹ *Thorn Group Limited 01 & 02* [2020] ATP 29 at [199]-[202]

⁴⁰ Including by making unnecessarily lengthy submissions or putting voluminous materials before the Panel without explaining their relevance or taking advantage of the financial weakness of another party. See also *Pinnacle VRB Limited 11* [2001] ATP 23

⁴¹ Including refusing a reasonable compromise during negotiations

⁴² *AMP Shopping Centre Trust 01* [2003] ATP 21 at [117]

⁴³ *Taipan Resources NL 11* [2001] ATP 16 at [100]-[101], in circumstances where the applicant seeking a review had provided an undertaking as to costs, see paragraph 33

- (e) wasted time or elongated proceedings on a particular issue⁴⁴ (partial costs referable to the additional expenses may be appropriate in this case)
 - (f) submitted material that was materially inaccurate⁴⁵
 - (g) ignored a reasonable request by a party to mitigate any clearly unacceptable circumstances in correspondence prior to lodging a Panel application or during Panel proceedings⁴⁶ or
 - (h) failed to comply with a direction under regulation 16(1) of the ASIC Regulations, a Panel order,⁴⁷ an undertaking to the Panel⁴⁸ or the Panel's Procedural Rules including those concerning confidentiality and media canvassing⁴⁹ (the costs of the other parties attributable to the failure may be ordered).
32. However, this should not be seen as an exhaustive list of the circumstances in which the Panel may consider making a costs order.
33. The Panel has power to accept a written undertaking from a person to pay such costs as determined by the Panel if an application fails.⁵⁰ An undertaking may be offered, for example, to persuade a Panel to consider a particular issue or pursue a line of inquiry during proceedings, or to persuade a President to consent to the making of a review application under section 657EA(2).⁵¹ Such an undertaking would be to pay the costs of the other parties in the event that the issue or inquiry is considered by the Panel to be frivolous or vexatious or not relevant to the proceedings or the review application fails.

⁴⁴ For example, by providing multiple drafts of inadequate additional disclosure (*Minemakers Limited* [2012] ATP 8 at [73]-[76])

⁴⁵ Parties should check the accuracy of the submissions or material they provide, particularly if generated by artificial intelligence

⁴⁶ *DRA Global Limited* [2022] ATP 16 at [156]-[158]

⁴⁷ *IFS Construction Services Limited* [2012] ATP 15 at [79]

⁴⁸ In *Montu Group Pty Ltd* [2024] ATP 25 at [83], the Panel, having made a declaration of unacceptable circumstances and accepted undertakings in lieu of orders, advised parties that it did not presently consider it necessary to make any orders, but reserved the right to do so (including as to costs) pending performance of undertakings to its satisfaction

⁴⁹ See rules 18 and 19 of the *Takeovers Panel Procedural Rules 2020*

⁵⁰ Section 201A of the ASIC Act

⁵¹ *Taipan Resources NL 11* [2001] ATP 16 at [98]-[99]

Amount of costs

34. The Panel will make its own determination of what costs to award a party based on its assessment of information provided by the party.⁵² Any claim for costs should set out and justify the amount which the party claims.⁵³
35. In determining costs the Panel may have regard to the Federal Court scale of fees on costs as between party and party, namely those costs that have been fairly and reasonably incurred by the party in the conduct of the proceedings.⁵⁴ In matters where it is warranted, the Panel may award costs in favour of a party having regard to the Federal Court scale of fees on costs on an indemnity basis⁵⁵ or make a costs order against the directors of a party⁵⁶ or their legal advisers.⁵⁷
36. Costs orders may, in appropriate cases, include the costs of external legal and other external advisers and of directors, and extend to the costs incurred in recovering costs. In appropriate cases, the Panel may decide to make costs orders that substantively covers a party's entire legal costs.
37. Generally, the Panel will not make a costs order in favour of an unrepresented party in relation to their own time spent in the proceedings.⁵⁸

⁵² In appropriate cases, the Panel may appoint an independent cost consultant to assess costs: see e.g. *Thorn Group Limited 01 & 02* [2020] ATP 29

⁵³ *Realestate.com.au Ltd* [2001] ATP 1 at [80]. Parties seeking costs may be asked to produce to the Panel and other parties copies of relevant invoices evidencing costs incurred and should keep this in mind during the course of proceedings

⁵⁴ See definition of "costs as between party and party" in Schedule 1 of the Federal Court Rules 2011

⁵⁵ Defined in Schedule 1 of the Federal Court Rules 2011 as meaning "costs as a complete indemnity against the costs incurred by the party in the proceeding, provided that they do not include any amount shown by the party liable to pay them to have been incurred unreasonably in the interests of the party incurring them"

⁵⁶ *Merlin Diamonds Limited* [2016] ATP 18 at [154]–[155]; *Molopo Energy Limited 12R* [2018] ATP 19 at [30]–[37] and (in relation to bearing the costs of preparing an independent expert's report) *Nex Metals Explorations Ltd 02* [2021] ATP 16 at [95]

⁵⁷ Noting that the Courts will only exercise their jurisdiction to award costs against a legal adviser "with care and discretion and only in clear cases", see *Lemoto v Able Technical Pty Ltd* (2005) 63 NSWLR 300 at [92]

⁵⁸ See *Cachia v Hanes* (1994) 179 CLR 403. For examples of where the Panel awarded costs in favour of an unrepresented party, see *Condor Blanco Mines Limited* [2016] ATP 8 and *Strategic Minerals Corporation NL* [2018] ATP 2

38. Where a party has unreasonably delayed part of the proceedings only, the Panel may (in appropriate cases) consider limiting a costs order by reference to costs incurred for that period.⁵⁹

Undertakings

39. Matters before the Panel may be resolved by undertakings under section 201A of the ASIC Act.
40. The Panel encourages parties to resolve matters wherever possible and welcomes any offer by a party to remedy potential unacceptable circumstances. An agreed resolution, such as by undertakings, can be more flexible and quicker than orders. It may also obviate the need for the Panel to make a declaration.⁶⁰ A party may offer an undertaking to resolve the matter at any point in the Panel's process. However, the timing of the offer is a relevant factor that the Panel considers when exercising its discretion whether to accept an undertaking in lieu of a declaration or orders.⁶¹
41. The Panel considers that the public interest is generally served by accepting an undertaking that addresses unacceptable circumstances to the Panel's satisfaction. Accepting an undertaking may render it unnecessary for the Panel to make a declaration or orders. However, the Panel may still consider it appropriate to make a declaration in such situations (for example, where the Panel wants to send the market a signal).⁶²
42. The Panel may be less willing to accept an undertaking from a party who has been uncooperative or has unnecessarily delayed proceedings.⁶³

⁵⁹ See *Minemakers Limited* [2012] ATP 8 at [71]-[76]

⁶⁰ If the Panel is minded to make a declaration of unacceptable circumstances, it may provide the relevant parties with a short time to provide an undertaking to resolve issues as a way of resolving the matter promptly.

⁶¹ For example, the Panel considered the approaching deadline to make a declaration under section 657B, as well as the time required to address satisfactorily the Panel's disclosure concerns, as relevant factors in declining to accept an undertaking in lieu of a declaration in *Brisbane Markets Limited* [2016] ATP 3 at [108]-[111]. In appropriate cases, if an undertaking is offered by a party to avoid a declaration of unacceptable circumstances and potential orders being made against it, the Panel will consider whether it is appropriate to require the undertaking to include an obligation to pay the other party's costs. See also paragraph 11 above

⁶² *Summit Resources Limited* [2007] ATP 9; *Mildura Co-operative Fruit Company Limited* [2004] ATP 5 at [96]; *Montu Group Pty Ltd* [2024] ATP 25 at [66]; *Alara Resources Limited* [2025] ATP 1 at [94]

⁶³ *Montu Group Pty Ltd* [2024] ATP 25 at [82]

43. An undertaking should be as simple and direct as possible. The Panel may favour a final order over an undertaking if the drafting of any undertaking may become overly complex, noting that the Panel cannot unilaterally vary an undertaking.⁶⁴
44. The Panel will expect provisions to the following effect in any undertaking offered:
 - (a) that the person offering it will do all that is necessary to secure performance of it and to enable persons whose rights and interests are affected by the circumstances to have the benefit of it⁶⁵ and
 - (b) the undertaking will be fulfilled as soon as practicable.
45. In the event of non-compliance with an undertaking, the Panel may apply to the Court for an order directing the person to comply.⁶⁶ This includes the undertakings relating to confidentiality and publicity given by a party in a notice to become a party.⁶⁷ The Court can make any order including that a person comply with the undertaking or pay compensation.

Other outcomes

46. The Panel's functions extend beyond resolving disputes. This is explicit from the rule-making power under section 658C, which gives the Panel power to establish standards. The Panel also publishes guidance, media announcements and reasons.

Reasons

47. If the Panel makes a declaration⁶⁸ or orders,⁶⁹ it must give the parties a statement of reasons for its decision, although these may not address all the submissions made. The Panel also gives reasons when it decides not to conduct proceedings. The Panel may also give reasons when it accepts an undertaking or takes no action. The President may

⁶⁴ *Southern Cross Media Group Limited 02R & 03R* [2023] ATP 15 at [67]–[94]

⁶⁵ *Secured Income Real Estate (Australia) Ltd v St Martins Investments Pty Ltd* (1979) 144 CLR 596

⁶⁶ Section 201A(3) of the ASIC Act

⁶⁷ See rules 12(1)(h), 16(1) and 18 and 19 of the *Takeovers Panel Procedural Rules 2020*

⁶⁸ Section 657A(6)

⁶⁹ Section 657D(4)

give reasons when consenting or declining to consent to a review of a Panel decision.⁷⁰

48. The Panel will normally publish its reasons.⁷¹ It generally gives parties its reasons initially on a confidential basis and an opportunity to make submissions on non-substantive corrections to the Panel's reasons, including any proposed redactions of unnecessary material which adversely affects an individual or is unfairly prejudicial.
49. Reasons may include reflections on the actions of a person or a reprimand of a person. The person should be aware of the risk of an adverse finding.⁷² The Panel has wide immunities for comments it might make,⁷³ but of course must be fair, proportionate and base its comments on credible information.

Advisers

50. In most cases advisers are more familiar than their clients with the technical, procedural, strategic and tactical aspects of takeovers and objectives of the Panel. The Panel has no formal powers to deal with advisers, but expects advisers to take all reasonable steps to ensure their clients comply with the law, ASIC policies, stock market rules and Panel policies (and, if there is an application, with the *Takeovers Panel Procedural Rules 2020*).⁷⁴
51. Section 194 of the ASIC Act provides that "[a] party to Takeovers Panel proceedings may be legally represented in the proceedings only with the leave of the Takeovers Panel". The Panel may refuse or withdraw consent if the Panel is concerned about the conduct of a party's proposed legal advisers or the proposed legal advisers have a conflict.⁷⁵

⁷⁰ Section 657EA(2). The reasons for consent may be incorporated into the sitting Panel's reasons. The President has published separate reasons for declining to consent: see e.g. *Austral Coal Limited 03R* [2005] ATP 15, *Careers Australia Group Limited 03R* [2015] ATP 2 and *Invest Blue Pty Ltd (Consent to Review)* [2025] ATP 6

⁷¹ Including the reasons of any member dissenting from the majority, see *Pasminco Limited (Administrators Appointed)* [2002] ATP 6, *Touch Holdings Limited* [2013] ATP 3 and *Finders Resources Limited 03R* [2018] ATP 11. Findings of fact in an order or reasons for an order are *prima facie* evidence of the fact: section 658B

⁷² *Annetts v McCann* (1990) 170 CLR 596

⁷³ Section 197 of the ASIC Act

⁷⁴ Note that a party's undertaking concerning confidentiality and media canvassing under section 201A of the ASIC Act is given on behalf of its advisers as well. The Panel considers that it is accordingly an obligation of the advisers not to act in a way that would lead to a breach of its client's undertaking

⁷⁵ *DRA Global Limited* [2022] ATP 16 at [128]–[130]; *Avalon Minerals Limited* [2013] ATP 11 at [130]–[146]

52. Advisers may be referred to (and even criticised) in the reasons for decision.

Other actions

53. The Panel may take other actions as well. These include:
- (a) issuing its findings in a media release
 - (b) privately admonishing a person. This is generally undertaken by the President or the president of a sitting Panel and can occur at any stage of the proceedings or
 - (c) reporting its findings to ASIC.⁷⁶

Publication history

GN 4		GN 9	
First Issue	28 February 2001	First Issue	19 August 2002
Reformatted	17 September 2003	First Revision	16 September 2003
Second Issue	12 July 2004	Second Issue	12 July 2004
Third issue	17 September 2007	Withdrawn	1 October 2008
Fourth issue	1 October 2008		
Fifth issue	27 May 2015		
Sixth issue	30 January 2017		
Seventh issue	8 July 2026		

Related material

GN 1: Unacceptable circumstances

GN 2: Reviewing Decisions

GN 5: Specific remedies - Information deficiencies

⁷⁶ ASIC Regulations, regulation 18