Australian Government

Takeovers Panel

Reasons for Decision
Pengana International Equities Limited
[2026] ATP 18

Catchwords:

Withdrawal of application – consent to withdraw an application – equal access share buy-back – effect on control – section 602 principles – concurrent proceedings

Corporations Act 2001 (Cth), sections 114, 257A, 602(a), 602(b)(i), 611 item 19

Australian Securities and Investments Commission Act 2001 (Cth), section 200

Australian Securities and Investments Commission Regulations 2001 (Cth), regulation 16(1)

Takeovers Panel Procedural Rules 2020, rule 15

Guidance Note 4: Remedies General, Guidance Note 19: Insider Participation in Control Transactions

Freshtel Holdings Limited [2016] ATP 15, Village Roadshow Limited 03 [2004] ATP 22, Village Roadshow Limited 02 [2004] ATP 12, Richfield Group Limited [2003] ATP 41

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

INTRODUCTION

1. The Panel, Chelsey Drake (sitting President), Jonathan Gidney, and Christopher Stavrianou, consented to a request from Pengana Capital Group Limited to withdraw its application in relation to the affairs of Pengana International Equities Limited. The application concerned an off-market equal access buy-back of up to 100% of the company's shares on issue.

2. In these reasons, the following definitions apply.

Antipodes	Antipodes Partners Limited
Buy-Back	off-market equal access buy-back described in the NOM and the Buy-Back Booklet
Buy-Back Booklet	has the meaning given in paragraph 14
Court Proceedings	has the meaning given in paragraph 13
EGM	has the meaning given in paragraph 9
Ex-Date	the date on which PIA shares trade ex-entitlement to participate in the Buy-Back
IBC	has the meaning given in paragraph 8
LIC	listed investment company
MVET	has the meaning given in paragraph 9(b)

NOM	has the meaning given in paragraph 9
PCG	Pengana Capital Group Limited
PCL	Pengana Capital Limited
PIA	Pengana International Equities Limited
PIML	Pengana Investment Management Limited
Rights Issue	has the meaning given in paragraph 10(c)(i)
Settlement Agreement	has the meaning given in paragraph 30
Soul Patts	Washington H. Soul Pattinson and Company Limited
WAM Global	WAM Global Limited
WAM Group	Wilson Asset Management Group
WAM Parties	WAR, WAM Global, and Wilson Asset Management (International) Pty Ltd
WAR	WAM Strategic Value Limited

FACTS

3. PIA is an actively managed LIC listed on ASX (ASX: PIA). PCG is an ASX-listed diversified funds management group (ASX: PCG). A subsidiary of PCG, PIML, is PIA's investment manager.

4. At the date of the application, the substantial holders of PIA shares were WAR (and associated entities) with voting power of 11.83%, Saba Capital Management GP, L.L.C. with 9.93% and Soul Patts with 12.16%.[1]

5. On 21 October 2025, PIA's Annual General Meeting removed three PIA directors, including Mr Russel Pillemer (PIA's managing director and PCG's CEO) and appointed four directors proposed in a section 249D[2] notice by WAR, including Mr Geoff Wilson, the Chairman of WAR. Mr Wilson and associated entities hold 100% of the issued shares of the investment manager of WAR and a number of other LICs.

6. Also on 21 October 2025, PIA's new Board announced that it had resolved to undertake a strategic review with a view to maximising value for all shareholders.

7. On 5 March 2026, PCG announced that it had entered into an agreement with Antipodes to assist PCG in managing the PIA investment portfolio. On 6 March 2026, PIA announced that PCG's announcement was made without PIA's consent or authorisation.

---

[1] Soul Patts has disclosed in substantial holder notices filed in relation to PIA that it has a relevant interest, pursuant to section 608(3), in a number of PIA shares in which PCG has a relevant interest and hence its disclosed voting power in PIA includes those shares

[2] Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapters 6 to 6C have the meaning given in the relevant Chapter (as modified by ASIC)

8. On 9 March 2026, PIA announced that the Independent Board Committee (**IBC**) it had established to review PIA's strategic options (including evaluation of a range of proposals received) had completed its assessment and had been formally dissolved, and further decision-making would be undertaken by the full Board. The announcement also indicated, among other things, that the Board had resolved to consider an off-market equal access buy-back of up to 100% of the company's shares, potential payment of a fully franked special dividend, and a "*recapitalisation initiative which may follow the proposed buy-back*".

9. On 26 June 2026, PIA issued a notice of meeting (**NOM**) convening a general meeting to be held on 27 July 2026 (**EGM**) to consider:

   (a) an ordinary resolution to approve the Buy-Back and

   (b) a special resolution for PIA to be wound up voluntarily, conditional on the resolution in paragraph 9(a) being passed and PIA's net assets falling below the "Minimum Viable Entity Threshold", which was described in the NOM as "*an evaluative framework by reference to which the Board will determine, following completion of the Buy-Back, whether the Company has sufficient scale to continue as a viable listed investment company*" (**MVET**).

10. The NOM indicated that the PIA Board was proposing an "integrated capital management approach" of initiatives designed to work together, including:

   (a) a fully franked special dividend of 12.50 cents per share, payable on Wednesday 19 August 2026

   (b) the Buy-Back (if approved by the resolution in paragraph 9(a))

   (c) if PIA remained above the MVET:

      (i) consideration of a non-renounceable pro-rata rights issue at the Company's after-tax NTA (subject to market conditions being considered appropriate, and with final structure, timing, scale and terms to be determined by the Board having regard to prevailing circumstances) (**Rights Issue**) and

      (ii) transition of the investment management of PIA's global equities portfolio to Antipodes and

   (d) if PIA fell below the MVET and the resolution in paragraph 9(b) was approved, voluntary winding up.

11. On 6 July 2026, PIA announced that the Board had determined to withdraw the resolution in paragraph 9(b) (to approve a conditional voluntary winding up of PIA) and intended instead, if PIA fell below the MVET, to convene a further general meeting to consider an unconditional resolution for voluntary winding up.

12. On 27 July 2026, PIA announced that the Buy-Back had been approved with 66.57% of votes cast in favour.

13. On 28 July 2026, PIA announced that its legal advisers had been informed that PCL, a related entity of PIML holding 1.34% of PIA shares, was commencing Court

proceedings that were expected to seek a declaration that the resolution referred to in paragraph 9(a) was invalid, and orders preventing PIA implementing the Buy-Back (**Court Proceedings**).

14. On 12 August 2026, PIA released a booklet containing detailed information about the Buy-Back (**Buy-Back Booklet**). Among other things, this:

    (a) stated that the Board's objective in proposing the Buy-Back was to "*provide all Shareholders with optional liquidity at a transparent, NTA-based price*"

    (b) indicated that eligible shareholders could elect to sell up to 100% of their shares registered on PIA's share register at 7:00pm (Sydney time) on the Buy-Back Record Date (Friday, 7 August 2026)—but shares subsequently registered would be ineligible and

    (c) indicated that the Buy-Back could have an impact on control of PIA and provided a table showing the indicative effect on the voting power of substantial shareholders and PCL (as known to the Board at 7 August 2026) at selected levels of aggregate Buy-Back take-up (assuming those holders do not participate in the Buy-Back). This indicated, for example, that the 9.49% holding of Soul Patts (which excluded the 2.68% interest arising through PCG) would increase to 10.54% on a 10% take up and to 94.86% on a 90% take up.

APPLICATION

Declaration sought

15. By application dated 31 August 2026, PCG sought a declaration of unacceptable circumstances. PCG submitted that, among other things:

    (a) material disclosure deficiencies in the NOM and Buy-Back Booklet together with significant control implications of the Buy-Back were contrary to section 602(a) and (b) and had a coercive effect on shareholder decision-making

    (b) the 100% Buy-Back structure contravened section 114, was not authorised under section 257A, and consequently was not exempt under item 19 of section 611

    (c) the IBC did not comply with Guidance Note 19 and there had been inadequate management of participating insiders' conflicts and

    (d) the Rights Issue had not been sufficiently explained and was unacceptable given its control implications when combined with the Buy-Back.

Interim orders sought

16. PCG sought interim orders to the effect that:

    (a) PIA not process any Buy-Back applications

    (b) WAM Parties and their associates not deal with their PIA shares or increase their voting power in PIA

    (c) PIA not implement or seek any shareholder approval for the Rights Issue.

Final orders sought

17. PCG sought final orders, including orders to the effect that:

    (a) WAM Parties disclose their intentions in respect of the Buy-Back and Rights Issue

    (b) PIA establish a Guidance Note 19 compliant IBC to review the Buy-Back

    (c) PIA seek fresh shareholder approval for the Buy-Back, issuing a new notice of meeting including an independent expert's report, with the WAM Parties and their associates excluded from voting.

DISCUSSION

18. We have considered all the materials but address specifically only those we consider necessary to explain our reasoning.

Interim orders

19. We considered PCG's request for interim orders, and the parties' preliminary submissions in response when we first met. We declined to make the interim orders sought at that stage as we considered that:

    (a) given the Buy-Back timetable, orders were not then necessary to preserve our ability to make final orders with regard to:

        (i) processing Buy-Back applications or

        (ii) the Rights Issue and

    (b) orders preventing the WAM Parties dealing with their PIA shares or increasing their voting power in PIA did not appear to be necessary to preserve the status quo or our ability to make final orders.

Decision to conduct proceedings

20. The WAM Parties made a preliminary submission that the Panel should not conduct proceedings for reasons including:

    (a) PCL had commenced NSW Supreme Court proceedings regarding the Buy-Back and the application traversed matters before the Court (including alleged disclosure deficiencies and invalidity of the Buy-Back)

    (b) the Buy-Back and Rights Issue were not coercive as participation was voluntary and no shareholder was compelled to do anything by either element

    (c) the application was an attempt by PCG, as investment manager, to prevent PIA shareholders having access to an exit at an equitable price, being after-tax NTA

    (d) the potential control implications raised by the application had been disclosed in the Buy-Back Booklet

    (e) Guidance Note 19 was not applicable and the Buy-Back had in any case been approved at PIA's general meeting.

21. PIA also submitted that the Panel should not conduct proceedings for broadly similar reasons.

22. We agreed with the WAM Parties and PIA that we should not conduct proceedings on matters that had been raised before the Court and were within its jurisdiction to address.[3] Accordingly, we indicated that we were not inclined to conduct proceedings on compliance with Chapter 2J, section 114, the availability of item 19 of section 611, and claims of misleading or deceptive conduct, breach of directors' duties, and oppression.

23. However, we considered that the application also raised matters, not before the Court, regarding the structuring and rationale of the Buy-Back and PIA's integrated capital management proposal, and the extent to which these and any control effects had been addressed and disclosed consistently with section 602. We decided to conduct proceedings and issued a Brief addressing those matters.

Brief questions regarding potential control impact

24. We had concerns about the potential control impact of the Buy-Back. At the EGM the Buy-Back was approved with 66.57% of votes cast in favour. The Buy-Back would result in PIA losing capital at after-tax NTA (less transaction costs), which appeared likely to be higher than PIA's market price. It is difficult to see an economically rational reason for shareholders to vote in favour of the Buy-Back unless they either: (i) wished to participate or (ii) hoped to increase their voting power (or even acquire control) by not participating.

25. We note that the overview of advantages and disadvantages in the NOM did not list any *advantages* of the Buy-Back for non-participating shareholders, but clearly stated possible *disadvantages* for non-participating shareholders, including that:

    (a) the Buy-Back would "*reduce the size of PIA's portfolio and its cash reserves, reducing the assets available for future investment opportunities*"

    (b) "*a smaller fund may experience reduced on-market trading liquidity, which may make it more difficult for remaining Shareholders to buy or sell Shares on the ASX at prices that reflect the underlying NTA*"

    (c) "*fixed operating costs (including compliance, listing fees, board costs, audit and administration) [would] be spread across a smaller asset base*" and

    (d) if net assets fell below the MVET, the conditional winding up resolution (if passed) would take effect.[4]

26. The relatively high vote in favour of the Buy-Back may have suggested that the take-up could also be reasonably high. The greater the take-up, the greater (and more uncertain) would be the potential effect on control. No shareholder had voting power of more than 13% and none could acquire more than 20% without making a takeover bid or relying on another exception to section 606. However, this also meant that if any person acquired a 20% stake in PIA *before* cancellation of accepted shares on 29 September 2026, they would be likely to acquire effective control (unless another person also acquired a 20% stake). That could potentially occur without warning to

[3] See e.g. *Richfield Group Limited* [2003] ATP 41 at [9]
[4] That resolution was subsequently withdrawn (see paragraph 11)

PIA shareholders, or the market – for example, if the stakes of one or more substantial shareholder(s) were acquired shortly before 29 September 2026, so that no substantial holder notice would need to be given before the cancellation of accepted shares.

27. In our Brief to parties, we noted that the Panel has previously found that it can "*deal with buy-backs with unreasonable effects on control of companies*"[5] and can find that a buy-back gives rise to unacceptable circumstances *"if it results in an increase in a person's voting power, coupled with circumstances which are contrary to the policy of Chapter 6"*.[6] We asked parties whether the Buy-Back Booklet:

    (a) allows PIA shareholders, consistently with s602(b)(i), to know the identity of *any* person who proposes to acquire or increase a substantial holding in PIA or acquire control of PIA and

    (b) gives PIA shareholders enough information to enable them to assess the merits of participating, or not participating, in the Buy-Back.

28. Our Brief also included questions as to:

    (a) whether there was any deficiency of information that might coerce shareholders to participate

    (b) whether PIA's Board should have considered whether the control effect of its capital management proposal exceeded what was reasonably necessary for its fundraising and/or capital management purposes and

    (c) whether the definition of MVET was sufficiently certain to be useful and appropriate and whether its use as a precondition to the Rights Issue and/or voluntary winding up could have a coercive effect.

Settlement Agreement and responses to the Brief

29. At 10am on 16 September 2026, the day when submissions in response to the Brief were due, PIA announced that it had reached a settlement with PCG and PCL to resolve the Court Proceedings and provide "*a pathway for PCG's Takeovers Panel application to be brought to an end*". The announcement stated:

> *The settlement is intended to remove litigation uncertainty and allow PIA to proceed with the next phase of its strategy: completion of the Buy-Back, transition of portfolio management to Antipodes, Board transition and continued capital management for PIA shareholders.*

    It also indicated that**:**

    (a) Mr Wilson, Mr Hamilton and Mr Martin (each being directors previously proposed by the WAM Parties), and Mr Jollie, would remain directors until completion of the Buy-Back and then resign with effect from 29 September 2026 (the anticipated Buy-Back completion date) and

---

[5] *Village Roadshow Limited 02* [2004] ATP 12 at [47], see also [41]-[46]
[6] *Village Roadshow Limited 03* [2004] ATP 22 at [52]

(b) WAM Group had advised the Board that it intended to participate in the Buy-Back and retain a shareholding in PIA of no greater than 2.69% of PIA's pre-Buy-Back issued capital.

30. In submissions in response to the Brief later that day, PCG noted the binding settlement agreement (**Settlement Agreement**) disclosed in PIA's announcement and indicated that:

(a) the terms of the Settlement Agreement required that:

(i) PCG immediately request the Panel's consent to withdraw the Application and discontinue the proceedings

(ii) PCG not, and must procure that its related entities do not, take any further steps to progress the Application and

(iii) PCG not provide any further submissions or evidence to the Takeovers Panel in connection with the application other than:

(A) factual information in response to a specific request or

(B) if required in accordance with a direction,[7] an order of the Panel or the Panel's Procedural Rules and

(b) accordingly, PCG was constrained from providing any substantive or further factual responses to the Panel.

31. PIA also only made a short submission, and stated that: "*In light of the settlement of the dispute between the parties, PIA does not intend to make any submissions in these proceedings*."

32. The WAM Parties were apparently not parties to the Settlement Agreement and subject to similar restrictions and provided a 14 page submission. In response to the questions referred to above,[8] the WAM Parties:

(a) accepted the general propositions stated by the Panel in *Village Roadshow Limited 02 and 03*

(b) accepted that a buy-back can give rise to unacceptable circumstances where it results in an increase in a person's voting power "*coupled with circumstances which are contrary to the policy of Chapter 6*"

(c) submitted that whether a buy-back gives rise to unacceptable circumstances depends upon the particular facts, noting the Panel's observation in *Village Roadshow Limited 03*[9] that it "*considers it likely that future Panels will look at the individual circumstances of each buy-back on a case-by-case basis*"

(d) submitted that the circumstances found to be unacceptable in prior Panel decisions were absent here, as no PIA shareholder held, or was known to be increasing to, more than 20% voting power

---

[7] Under regulation 16(1) of the *Australian Securities and Investments Commission Regulations 2001* (Cth)
[8] See paragraphs 27-28
[9] *Village Roadshow Limited 03* [2004] ATP 22 at [12]

(e) noted, regarding the Buy-Back, that:

(i) the price was fixed by a disclosed formula at after-tax NTA less transaction costs, with no discount

(ii) it would be funded from realisation of PIA's portfolio assets, not debt

(iii) the identity and existing holdings of all substantial shareholders, the potential for their voting power to increase if they do not participate, and the control effects at take-up from 10% to 90%, were all set out in the Buy-Back Booklet and

(iv) the Buy-Back had been approved by 66.57% of votes cast at the EGM

(f) submitted, with regard to section 602(b)(i), that "*[i]n an equal access buy-back no person proposes to acquire anything: a non-participating shareholder's voting power increases only because, and to the extent that, other shareholders choose to sell, and the holder neither acquires shares nor pays for the increase*" and

(g) submitted that the Buy-Back Booklet provided "comprehensive" disclosure that did not suffer from deficiencies identified in previous Panel decisions and gave PIA shareholders the information they need to make an informed decision as to whether to participate in the Buy-Back.

33. ASIC submitted, among other things, that:

(a) several questions were finely balanced and turned on facts not yet available, including the intentions of the WAM Parties and what the PIA board considered. On those, ASIC sought to identify what may be open to the Panel, "*these being ultimately matters for the Panel drawing on its commercial experience on the totality of the evidence and submissions*"

(b) whereas, on one hand, this was an equal access buy-back at after-tax NTA, approved by shareholders, with disclosure of effects on voting power:

> *On the other hand, it is a buy-back of up to 100% of PIA's shares, to be followed (if the MVET is met) by a 1-for-1 rights issue. The materials presently suggest this was conceived shortly after an unsuccessful proposal by an entity associated with two PIA directors to acquire PIA by scheme. That holder's intentions have not been disclosed and, on the Booklet's tabulated voting power scenarios, could exceed 20% at around 50% take-up, and hold a majority at 80% take-up, without acquiring a share or paying a premium.*

(c) an increase in voting power may not be unacceptable "in and of itself" and something more is normally required

(d) the tabular disclosure of potential effects on substantial holder voting power allowed PIA shareholders to "*identify who <u>might</u> acquire or increase a substantial holding or control by not participating, but not necessarily whether <u>any</u> person "proposes" to acquire or increase a substantial holding*". ASIC noted (without expressing a view as to whether it was required) that the information provided did not include:

(i) a statement of WAM Parties' intentions (as the only substantial holder represented on the board)—noting also the NOM stated that the Board "*has not solicited and does not rely on*" any indication of intention

(ii) information concerning WAM Global's November 2025 proposal to acquire PIA by scheme, its revival in March 2026, the 23 March 2026 proposal concerning PIML's management rights, or the relationship, if any, between those matters and the subsequent development of the Buy-Back

(iii) the potential significance for control of acquisitions on or after the Ex-Date and

(e) while the Panel might conclude that shareholders overall received sufficient information, on the other hand, a shareholder deciding whether to remain may lack relevant information related to control, such as:

(i) WAM Group's intentions and its previous proposals to acquire PIA by scheme

(ii) key terms of the Rights Issue that may assist shareholders to compare exiting at NTA with remaining and subscribing

(iii) the MVET and

(iv) what the Board considered regarding the control effects of the package and alternatives with a lesser control effect (aside from the NOM stating that a scaled or capped buy-back was rejected for "allocation complexity").

34. In their rebuttal to ASIC's submission, the WAM Parties submitted, among other things, that:

(a) PIA's announcement regarding the Settlement Agreement had addressed concerns raised in the Brief and ASIC's submissions that shareholders did not know whether WAM Group would participate in the Buy-Back

(b) the information was given while the Buy-Back was open and every shareholder had the opportunity to withdraw all or part of its election and none were locked in to a decision made in ignorance of WAM Group's intentions.

Consent to withdraw an application

35. On 16 September 2026, PCG formally requested the Panel's consent under Procedural Rule 15 to withdraw its application.

36. The Panel has previously noted that, while there are often good reasons not to withhold consent for an applicant to withdraw, the requirement of Panel consent:

> *…safeguards the public interest by protecting against the adverse effects of unacceptable circumstances that could otherwise remain unremedied as a result of a unilaterally withdrawn application. It may act as a "brake" to stop undue pressure to withdraw the application being brought to bear on an applicant.*[10]

[10] *Freshtel Holdings Limited* [2016] ATP 15 at [30]-[31]

37. When our consent was first sought, we continued to be concerned that there may be unacceptable circumstances remaining unremedied. We were also concerned, given PCG's submissions concerning the terms of the Settlement Agreement, that PCG may be limited in its ability to continue engaging with, or providing information to, the Panel.

38. Given our concerns, we indicated that we were not presently minded to consent to withdrawal of the application and instead requested that PIA provide information, based on information available as at 7:00pm (Melbourne time) on Monday 21 September 2026, as to:

    (a) the total number of PIA shares in respect of which PIA received acceptances under the Buy-Back

    (b) whether PIA received acceptances of the Buy-Back in respect of PIA shares of the substantial holders listed in the Buy-Back Booklet's tabular disclosure of potential effects on voting power, and in each case, details of the person, their interest and the number of PIA shares to which the acceptance related

    (c) details of each person who would, if all shares in respect of which PIA received acceptances were cancelled, have voting power in PIA of greater than 10%.

39. In response, PIA submitted (among other things) that:

    (a) the take-up rate of the Buy-Back was approximately 59.1%

    (b) WAR (and associated entities) and Saba Capital Management GP, L.L.C. had accepted the Buy-Back in respect of all of their PIA shares

    (c) Soul Patts would hold approximately 23.18%[11] of the PIA shares on issue following cancellation of all shares accepted under the Buy-Back and is the only person who would have voting power in PIA of greater than 10% following cancellation of all shares accepted under the Buy-Back and

    (d) the next largest shareholding group after Soul Patts is PCG and its associates, with a combined holding of approximately 6.55% of post-buy-back issued capital.[12]

40. We also received from PIA the provisions of the Settlement Agreement relevant to the withdrawal of PCG's application, including any provisions governing restraints on parties making submissions to the Panel.

Concerns regarding potential control impact

41. We continued to have concerns as to whether the structure and course of the Buy-Back (including in the context of the potential Rights Issue) were consistent with the purposes of Chapter 6. Our preliminary view was that none of the submissions we received adequately addressed the risk discussed above[13] that a substantial stake of

---

[11] Based on the 24,470,580 shares held by Soul Patts (which excluded shares in which PCG had a relevant interest that Soul Patts had advised it had a relevant interest in under s608(3)): see footnote 1

[12] PIA subsequently provided an update of these figures – see footnote 17

[13] See paragraphs 24-28

up to 20% acquired at any time before cancellation of shares accepted into the Buy-Back would then likely become a stake conferring effective (or near effective) control.

42. There may well be other respects in which a 100% Buy-Back is inconsistent with section 602. Ultimately, we decided it was not necessary or appropriate to reach a final view on that, for reasons explained below.[14]

Concerns regarding Settlement Agreement constraints

43. We also had concerns regarding provisions in the Settlement Agreement that purported to restrict PCG from making further submissions to the Panel in these proceedings (subject to certain exceptions). Once again, for the reasons below,[15] we did not find it necessary to fully explore or make findings in relation to the operation or effect of these provisions. However, we do wish to express our concerns regarding the potential for provisions of this kind generally to impact Panel proceedings.

44. Under the Procedural Rules, withdrawal of an application requires the consent of the Panel. This requirement recognises that while a dispute may be settled on terms that are agreed between parties to a matter in their commercial interests, the Panel's role also includes consideration of the broader public interest in the matters arising before it. While the efficient resolution of disputes is encouraged, this does not mean that arrangements that risk interfering with the Panel's ongoing consideration of a matter in the public interest are acceptable because they are entered into in aid of reaching a settlement. We would encourage parties in future matters to give careful consideration to the risk that such provisions may obstruct, disrupt or hinder the Panel's consideration of matters before it.[16] Agreements having that effect may make it necessary for the Panel to use its powers to summons witnesses and potentially consider cost orders against parties who made that necessary.

Consent to withdraw

45. After receiving and considering further information regarding the outcome of the Buy-Back, including the actual post-withdrawal period acceptance position—which was substantially the same as that referred to in paragraph 39[17]—we decided to consent to PCG withdrawing its application, given:

    (a) the settlement reached by PIA, PCG and others resolved (among other things) the dispute between the parties that formed the subject matter of the application (noting the Panel's general inclination to encourage parties to resolve their disputes where possible)[18] and

---

[14] See paragraph 45
[15] See paragraph 45
[16] See also section 200 of the *Australian Securities and Investments Commission Act 2001* (Cth)
[17] PIA updated its response to note (among other things) that the take-up rate of the Buy-Back was approximately 58.56%, that Soul Patts would hold approximately 22.89% of the PIA shares on issue following cancellation of all shares accepted under the Buy-Back, and that PCG and its associates would have a combined holding of approximately 6.46% of post-buy-back issued capital
[18] See Guidance Note 4: *Remedies General* at [40]

(b) despite our concerns about the structure and course of the Buy-Back—including in relation to the purposes of Chapter 6 and the context of the potential Rights Issue—we did not consider it appropriate to determine those issues having regard to:

(i) the scope and potential significance of the broader policy issues raised

(ii) the absence of Panel policy and prior decisions concerning equal access buy-backs of up to 100% of a company's shares and

(iii) the information we received concerning the actual outcome of the Buy-Back.

46. Ultimately it was not necessary for us to consider whether an equal access buy-back of up to 100% of a company's shares is inconsistent with section 602 but this may require consideration in the future.

DECISION

47. For the reasons above, we consented to PCG withdrawing its application. We consider that it is not against the public interest to do so.

Chelsey Drake
President of the sitting Panel
Decision dated 28 September 2026
Reasons given to parties 23 October 2026
Reasons published 6 November 2026

Advisers

Party	Advisers
Pengana Capital Group Limited	Hamilton Locke
Pengana International Equities Limited	Corrs Chambers Westgarth
WAM Strategic Value Limited, WAM Global Limited and Wilson Asset Management (International) Pty Ltd	Gadens