



**In the matter of Pinnacle VRB Ltd No. 9
[2001] ATP 25**

Catchwords

Information outside bidder's and target's statements – allegation of misleading and defamatory statements in letter to shareholders – clarification of misleading statements – undertaking to correct misinformation – reputation and defamation – use of emotive or intemperate language

Corporations Act 2001 (Cth), section 602

An application under section 657C of the Corporations Act by Vanteck (VRB) Technology Corp. to the Takeovers Panel for a declaration of unacceptable circumstances and final orders from the Panel in relation to Vanteck's takeover bid for Pinnacle VRB Limited. The Panel decided not to make a declaration of unacceptable circumstances but sought an undertaking from Mr David Pethard to send a letter of clarification to Pinnacle shareholders.

THE APPLICATION

1. Vanteck (VRB) Technology Corp (**Vanteck**) applied under sections 657A and 657D of the Corporations Act 2001 Act on 21 September 2001 for a declaration of unacceptable circumstance and final orders from the Panel (the **Application**) in relation to Vanteck's takeover bid (the **Bid**) for Pinnacle VRB Limited (**Pinnacle**).
2. The Application related to the conduct of one of the directors of Pinnacle, Mr David Pethard. Vanteck alleged that the two letters sent by Mr Pethard to shareholders of Pinnacle on 17 September 2001 (**Pethard Letters**) concerning Vanteck's bid for Pinnacle and the upcoming general meeting of Pinnacle's shareholders gave rise to unacceptable circumstances.
3. Vanteck alleged that the Pethard Letters contain information that was misleading and defamatory of Vanteck and therefore gave rise to unacceptable circumstances because of its potential to affect Vanteck's reputation.
4. The sitting Panel in this matter is Marian Micalizzi (sitting President), Robyn Ahern (sitting Deputy President) and Alison Lansley.
5. At the time the application was received, a general meeting of Pinnacle shareholders (convened by Vanteck under section 249F of the Corporations Act) was scheduled to be held on 1 October 2001 (**Pinnacle EGM**).
6. On Friday 21 September 2001, following discussions with and in response to a request from ASIC, (which was unrelated to these proceedings) Pinnacle issued a supplementary target's statement (**Pinnacle Supplementary**) which clarified the status and nature of various projects referred to in the Pethard Letters. The Pinnacle Supplementary stated:
 - (a) the procedure under the Collaboration Agreement between Pinnacle and Sumitomo Electric Industries (**SEI**) dated 25 February 2000 (**CBA**) for SEI

- to notify potential VRB installation projects to Pinnacle (including the need for SEI to undertake initial feasibility and engineering costs studies);
- (b) that in the opinion of Pinnacle's Board, in relation to the 20 VRB projects identified by Mr Pethard in the first Pethard Letter, SEI has only ever notified Pinnacle of a proposal to be involved in those 20 potential projects but had not undertaken any initial feasibility or costs studies in relation to any of them; and
 - (c) that Pinnacle had agreed to SEI proceeding with the installation of a VRB system in Italy under the terms of the CBA.
7. The Panel met on 24 September 2001 and requested Vantack to provide further information to the Panel as to the status of the assertions in the Application given that the Pinnacle Supplementary appeared to address some of Vantack's concerns. Vantack provided that information on 25 September 2001.
8. The Panel met again on 25 September 2001 and decided under ASIC Regulation 20 to conduct proceedings in relation to the Application, having regard to the further information provided by Vantack.

FINAL ORDERS

9. Vantack applied for final orders that:
- (a) (a) Mr Pethard send a letter to all Pinnacle shareholders retracting and apologising for the comments made in the Pethard Letters and noting that the Panel had declared unacceptable circumstances in relation to the sending of the Pethard Letters by no later than 27 September 2001;
 - (b) (b) the Pinnacle EGM be postponed until 10 business days after dispatch of the letter to Pinnacle shareholders has been; and
 - (c) (c) a certificate be issued under section 658B(2) of the Corporations Act verifying any finding of fact by the Panel that contradict the facts as alleged by Mr Pethard in the Pethard Letters.

BACKGROUND

10. The sequence of events relevant to this Application is summarised in Annexure 1.

Pinnacle EGM

11. On 26 September 2001, Pinnacle agreed to a request from the Panel to postpone to 15 October 2001 the date for the Pinnacle EGM. A notice to shareholders to that effect was dispatched that day and an announcement made to ASX. At that time the Panel considered that postponement of the Pinnacle EGM until 15 October would allow it enough time to resolve the issues in dispute in these proceedings prior to the meeting going ahead. Accordingly, the Panel considered that it was not necessary to make the order requested by Vantack in paragraph 9(b) above.

Assertions in Pethard Letters

12. Mr Pethard asserted the following in the first Pethard Letter:
- (a) that SEI had notified Pinnacle of 20 VRB projects (which were listed) it wished to undertake outside Japan and which, where successfully installed, would generate a substantial income stream to Pinnacle. It was also asserted that Pinnacle and SEI had received many inquiries (presumably in relation to potential installation of VRB systems) and expected that those inquiries would lead to a further escalation in demand for SEI produced VRB systems;
 - (b) that VRB projects could take many months to mature and that some projects may not be proceeded with, although the 20 potential projects notified showed the level of interest in the technology;
 - (c) that under the CBA, where SEI wished to undertake projects outside Japan, SEI must invite Pinnacle to participate in those projects with SEI and that Pinnacle had a choice whether to participate in exchange for licence fees of 3% of net sales on installations of VRB systems;
 - (d) that Pinnacle had committed itself to the installation of a VRB system in Italy;
 - (e) that various other projects or agreements were under development or negotiation including an offer from Vanadium Australia to enter into a collaboration agreement with Pinnacle¹; and
 - (f) that Pinnacle had been forced to significantly write down the value of its investments in certain dot.com businesses.
13. Mr Pethard asserted the following in the second Pethard Letter:
- (a) that through convening the Pinnacle EGM, Vantech had severely constrained Pinnacle in moving forward with its business;
 - (b) that Vantech's involvement on Pinnacle's Board had significantly hampered the company's progress on many matters (the full text of these statements is set out in Annexure 2);
 - (c) that Vantech's nominee directors on the Pinnacle Board had not contributed any knowledge or advancement of the company's affairs during their time as directors;
 - (d) that over the previous year, serious strain had been put on Pinnacle's relationship with SEI and that voting Vantech nominees onto the Pinnacle Board at the Pinnacle EGM would not assist Pinnacle to resolve that relationship;

¹ Other matters mentioned include discussions with Hydro Tasmania for possible installation of a VRB system at King Island, a research and development agreement with Unisearch and a request for approval to proceed with a VRB system installation in Japan by Mitsubishi – Kashima Kita.

- (e) that Mr Pethard doubted the existence of the Carve Out projects² being negotiated by Vantek in the United States and that Pinnacle had not been provided with the details of those negotiations;
- (f) that not all offers made to Pinnacle shareholders were the same and that there may be some difficulty in accepting shareholders receiving their consideration;
- (g) that Vantek had not complied with the rules of the Canadian Venture Exchange (CDNX) and British Columbia Securities Commission; and
- (h) that potential alternative candidates for election to the Pinnacle Board had been found, including a representative of SEI.

Material Facts

14. The Panel issued its Brief under ASIC Regulation 20 on 25 September 2001. Having regard to the matters raised in the Pethard Letters and the Application, the Panel sought submissions in relation to the following issues:
- (a) what rights SEI has under the CBA with Pinnacle to undertake projects outside Japan and the status of the 20 VRB projects set out in the first Pethard Letter;
 - (b) whether SEI notified Pinnacle of each of the 20 VRB projects referred to in the Pethard letters. If so, how and when notifications were made, and whether any have resulted in firm orders for VRB systems;
 - (c) whether Vanadium Australia offered to enter into a Collaboration Agreement with Pinnacle and the current status of those discussions;
 - (d) whether Pinnacle approved the supply and installation of a VRB system in Italy and if so, when and what revenue is likely to be generated for Pinnacle;
 - (e) the amount of the write down of non-core investments referred to in the Pethard Letters, whether that had been formally approved by the Pinnacle board and announced to the market;
 - (f) the status of the “Carve-out projects” referred to in the Pethard Letters since information was previously provided to the Panel in the Pinnacle No.8 proceedings;
 - (g) the current status of the discussions between Vantek and ASIC in relation to the acknowledged breach of section 619 of the Corporations Act. Why the issue had not been resolved since it was brought to Vantek’s attention on 24 August 2001 and how it was proposed that it be resolved;

² The Carve Out projects are 4 potential projects for installation of VRB systems being negotiated by Vantek in the United States with member companies of the Electric Power Research Institute.

- (h) whether the Pethard Letters were written personally or on behalf of Pinnacle and whether their status has been sufficiently clarified to Pinnacle shareholders;
 - (i) whether the Pinnacle Supplementary provided Pinnacle shareholders with all further information that is material to their decision whether to accept the Bid;
 - (j) what clear supporting evidence Mr Pethard had for the allegations as to conduct of Vantek nominee directors on the Pinnacle Board set out in the second Pethard Letter; and
 - (k) whether the allegations by Vantek in its application that there were deficiencies in the Pethard Letters were primarily matters of opinion which could be raised by Vantek in a supplementary bidder's statement or primarily matters of fact which could readily be shown to be unsubstantiated.
15. The Panel considered all submissions received and analysed the information and level of disclosure made by Vantek and Pinnacle to date in their various bidders' statements and targets' statements.
16. Vantek submitted that the defects in the letters were matters of fact and unsubstantiated opinion that should properly be addressed by Mr Pethard in a letter of retraction. ASIC submitted that to the extent that the Panel considered there was material information which should be disclosed, this ought to be done by Vantek or Pinnacle (as the case may require) via the issue of a formal supplementary bidder's or target's statement. Pinnacle submitted that all relevant information in relation to Pinnacle was now before shareholders and that there was no reason for it to issue a further supplementary target's statement. In particular, Pinnacle noted that shareholders are now well informed that there are two shareholder groups arguing strongly in favour of and against Vantek acquiring control of Pinnacle respectively.

ANALYSIS AND DECISION AS TO DISCLOSURE

17. Having analysed the current status of the matters listed above in paragraphs 14(a) to (k) we concluded that, taking the information provided to Pinnacle shareholders as a whole in the bidder's statement, supplementary bidder's statements, target's statement and the Pinnacle Supplementary, the parties had eventually managed to sufficiently disclose material information to Pinnacle shareholders. However, we did have reservations that the manner of disclosure of the relevant information to shareholders lacked cohesion, was not well planned, came from sources in addition to the target and the bidder and had the potential to confuse shareholders as to the current status of certain matters (such as the 20 potential SEI VRB projects).
18. Taking the information contained in the Pethard Letters into account, we concluded that, despite our reservations as to the lack of cohesion and potential lack of clarity with which information was presented to Pinnacle shareholders,

further disclosure by Pinnacle in the form of a supplementary target's statement would not be required.

19. We decided that the status of:
- (a) the 20 potential VRB projects notified by SEI to Pinnacle under the CBA and of the Carve Out projects being negotiated by Vantek;
 - (b) the Italian VRB project;
 - (c) discussions with Vanadium Australia in relation to a possible Collaboration Agreement;
 - (d) the write down of non-core investments by Pinnacle; and
 - (e) discussions between Vantek and ASIC in relation to a technical breach by Vantek of section 619 of the Corporations Act,
- had eventually been sufficiently disclosed to Pinnacle shareholders in the bidder's, target's and supplementary statements.

Request for clarification

20. Notwithstanding our decision in relation to formal disclosure, we noted that there were certain statements made in the Pethard Letters that, given the tone and context in which they were made, we considered should be clarified for Pinnacle shareholders by Mr Pethard because they had the potential to at worst mislead and at best confuse shareholders. The submissions made it clear that Mr Pethard sent the Pethard Letters on his own behalf and not on behalf of Pinnacle.
21. On 4 October 2001 we requested that Mr Pethard undertake to the Panel to prepare and send a letter to Pinnacle shareholders clarifying those particular statements in the Pethard Letters (**Clarification Letter**).
22. We asked that the Clarification Letter:
- (a) clarify SEI's rights outside Japan under the CBA by stating that SEI does not have express rights to manufacture Project Based Licensed Products outside Japan, that Pinnacle has a discretion whether to grant such rights and that it may not be cost effective for Sumitomo to manufacture the products in Japan for export;
 - (b) clarify that there is a real risk that, other than in relation to the Italian installation project, the projects notified in the table in the first Pethard Letter may not proceed and that currently, no feasibility or costs studies have been provided to Pinnacle by SEI in relation to any of the proposed projects;
 - (c) retract and clarify each of the statements in paragraphs 2 and 4 on page 3 of the second Pethard Letter concerning shareholders' ability to receive consideration for accepting the Bid and Vantek's compliance with the rules of the Canadian Venture Exchange; and

- (d) retract the statements in the following bullet points in paragraph 5 on page 1 of the second Pethard Letter:
- (i) second, third and fifth bullet points regarding conduct of Vantek nominee directors on Pinnacle's Board; and
 - (ii) fourth bullet point in relation to Pinnacle Board authorisation of ASX announcements.
23. These paragraphs of the second Pethard Letter are set out in Annexure 2.
24. On 5 October 2001, Mr Pethard gave the undertaking requested by the Panel. The Clarification Letter was sent to Pinnacle shareholders on 11 October 2001 after being reviewed by us.

REPUTATION AND DEFAMATIO

25. Vantek suggested that the Panel should require Mr Pethard to address in any letter to Pinnacle shareholders that some of the statements made in the Pethard Letters were defamatory and potentially damaging to Vantek's reputation. Vantek argued that the Panel should not permit a situation to exist whereby defamatory statements are disseminated to the market since this would undermine the policy objectives of Chapter 6 of the Corporations Act and market confidence in the takeovers regime.
26. We do not consider that it is the role of the Panel to consider or police issues relating to reputation or to interpret the law of defamation. We considered that the appropriate remedy in these circumstances was to require Mr Pethard to issue the Clarification Letter in terms acceptable to the Panel, in order to address potentially confusing and biased statements to Pinnacle shareholders in the context of the Bid. Should Vantek consider that it had been defamed, it is open to Vantek to bring an action against Mr Pethard in Court.

DECISION

27. The Panel considered that all material issues raised by Vantek in the Application had been sufficiently disclosed to Pinnacle shareholders in the various bidder's statements and target's statements (including the Pinnacle Supplementary) and that any potential for the Pethard Letters to confuse shareholders had now been addressed in the Clarification Letter. Accordingly, we declined to make a declaration of unacceptable circumstances.
28. The Panel notes that Pinnacle's shareholders have been subjected to correspondence from various parties (including shareholders) interested in the outcome of the Bid throughout the bid period. Such correspondence, somewhat unavoidably, contains strong opinions written with a tone and context that has the potential, if not to mislead then at least to confuse, shareholders unless the material the subject of the correspondence is presented in a balanced non-emotive manner, the facts are verified and carefully disclosed by the writer and the assumptions upon which any opinions are based are also disclosed. The Panel's primary concern in these cases is to ensure that, consistent with the principles set out in section 602(a), shareholders

are provided in a timely manner with all material information on which to assess the Bid in a manner that does not potentially mislead them.

29. The Panel notes that in takeovers it is preferable that all material information that shareholders may require to make their decision is provided to the market in bidder's and target's statements (whether initial or supplementary) rather than in *ad hoc* or piecemeal correspondence so as to minimize the risk of shareholders being misled or confused
30. The Panel considers that information sent to target shareholders should avoid use of emotive or intemperate language. The tone and context of the Pethard Letters takes a view of the relevant factual material disclosed that is strongly biased towards Mr Pethard's view of the Bid and Pinnacle's current business status.
31. The Panel is also concerned that any person putting information before target shareholders in relation to a takeover offer should take considerable care to ascertain that the facts they assert are correct and can be verified. In this regard, the Panel notes Mr Pethard's admission in his submissions in these proceedings that statements made in the second Pethard Letter regarding Vantek's non-compliance with Canadian listing rule requirements were later discovered by him to be incorrect.

COSTS

32. We did not make an order for costs as we decided not to make a declaration of unacceptable circumstances.

FURTHER ISSUES RAISED BY ASIC

In its submissions, ASIC also introduced arguments relating to two issues regarding the Bid that had not been canvassed in the Application or the Brief. The Panel determined to consider separately whether it had jurisdiction to consider those issues in these proceedings and, if necessary, prepare a supplementary Brief seeking further submissions. The Panel also decided that it would prepare reasons in relation to those issues separately once the Panel had a proper opportunity to consider those issues.

Marian Micalizzi
President of the Sitting Panel
Decision dated 17 October 2001
Reasons published 7 November 2001

ANNEXURE 1

PINNACLE NO.9

KEY EVENTS IN RELIABLE & VANTECK TAKEOVER OFFERS FOR PINNACLE

EVENT	DATE
Vantek announces bid for Pinnacle	12 June 2001
Pinnacle sends notice of general meeting for 13 August 2001 to Pinnacle shareholders	12 July 2001
Vantek bidder's statement (replacement version) lodged	30 July 2001
Pinnacle postpones EGM until 20 August 2001	10 August 2001
Pinnacle issues target's statement in relation to Vantek offer	16 August 2001
Vantek second supplementary bidder's statement	16 August 2001
Vantek third supplementary bidder's statement	20 August 2001
PINNACLE EGM AT WHICH RESOLUTIONS TO APPOINT 4 VANTECK NOMINEE DIRECTORS WITHDRAWN AS CANDIDATES WITHDREW CONSENT TO ACT PRIOR TO MEETING	20 August 2001
Vantek convenes meeting of Pinnacle shareholders under s249F of Corporations Act for 1 October 2001	20 August 2001
Pethard Letters sent to Pinnacle shareholders	17 September 2001
Panel receives <i>Pinnacle 9</i> application from Vantek	21 September 2001
Pinnacle issues supplementary target's statement under s644 of Corporations Act on request by ASIC. (ASIC issues media release to this effect)	21 September 2001
Vantek extends offer until 12 October 2001	21 September 2001
At <i>Pinnacle 9</i> Panel's request, Pinnacle postpones to 15 October 2001 EGM previously scheduled to occur on 1 October 2001	26 September 2001
Panel requests Mr Pethard to undertake to send Clarification Letter to Pinnacle shareholders	5 October 2001

Mr Pethard gives undertaking sought by Panel to send Clarification Letter	5 October 2001
<i>Pinnacle 11</i> Panel makes interim orders requiring Vantech to extend closing date for Bid to not earlier than 19 October 2001 and requiring Pinnacle to postpone EGM further until not earlier than 22 October 2001	11 October 2001
Mr Pethard sends Clarification Letter to Pinnacle shareholders	11 October 2001
Panel makes orders requiring Vantech to extend its bid (previously scheduled to close on 19 October 2001) until at least 7 days after ASX determines Vantech's application for listing	17 October 2001
PINNACLE EGM OCCURRED	22 October 2001

ANNEXURE 2

RELEVANT EXCERPTS FROM SECOND PETHARD LETTER

Paragraphs 2 and 4 on page 3 read:

"I am aware that some Pinnacle shareholders have found out that not all offers were the same and that there may be some difficulties in accepting shareholders in receiving their entitlements

...In my opinion Vanteck has not complied with the complete rules and regulation of the CDNZ and BCSC and this could lead to investigations and the halting of the offer and invalidating offers. Action here is still pending."

Paragraph 5 and the bullet points following it of the second Pethard Letter read:

"The effect of Vanteck's involvement on Pinnacles board has significantly hampered the company's progress on many matters including:

- The acceptance and progression of some 20 projects that have been notified to the company by its two Japanese alliance partners;*
- The complete stalling of the company to develop an independent Electrolyte Policy, which is a mainstay of the commercialisation of our technology. While pursuing the Vanteck electrolyte development;*
- Extending and adopting frustrating and expensive procedures with respect to Reliable Power Inc. takeover and other matters without keeping the company's independent directors informed on a timely basis;*
- Releasing ASX announcements without any reference to the board;*
- Treating our business partners with a degree of contempt with the aim of possibly to advantaging Vanteck and to possibly harming Pinnacle.*
- The combination of Federation/ Vanteck failed to honour their undertaking to have one of it's [sic] directors resign after Dr Richard Sharp (Unisearch representative) resigned earlier this year. This added an undue influence on Pinnacle's board by having 4 out of 7 Vanteck representatives on the board;*
- The collapsing of the executive committee structure has put severe strains on the abilities of the company to progress its activities in a normal manner."*

ANNEXURE 3

CLARIFICATION LETTER

IMPORTANT NOTICE TO PINNACLE VRB LIMITED SHAREHOLDERS

Letter to Shareholders from David Pethard clarifying statements made in letters dated 17 September 2001.

Dear Pinnacle VRB shareholder

I refer you to my letters of 17th September 2001 which were titled " Letter to Shareholders from David Pethard in response to Vantek" (the Letter"). Following that letter Vantek sought a declaration of "unacceptable circumstance" from the Corporations and Securities Panel ("the Panel") the Pinnacle No 9. Proceedings).

The Panel has considered all submissions provided to it by the parties. The Panel does not consider, on the basis of the information placed before it that there are matters of fact relating to Vantek, Pinnacle, Sumitomo Electrical Industries ("SEI") or Vantek's bid for Pinnacle that would be material to shareholders of Pinnacle in deciding whether to accept the bid requiring additional disclosure by Vantek or Pinnacle.

However the Panel does consider that the Letter contains statements that, due to the context and in tone in which they were written, require clarification by me to shareholders in relation to the matters detailed below.

1. **What right does Sumitomo have to undertake projects outside of Japan?**
 - 1.1 In my first letter dated 17 September 2001 I stated that there is a Collaboration Agreement between Pinnacle and SEI, and that under this agreement Pinnacle does receive royalties for VRB projects that are installed by SEI "in and outside of Japan".
 - 1.2 I also stated that "under the terms of the Collaboration Agreement where SEI wishes to undertake projects outside of Japan, SEI must invite Pinnacle to participate with them in these projects".
 - 1.3 To make the position clear, the Collaboration Agreement provides that;
 - (a) SEI can undertake projects outside of Japan subject to complying with the terms of the Collaboration Agreement with Pinnacle.
 - (b) Unless Pinnacle provides further express rights, SEI is required to manufacture the Project Based Licensed Products in Japan. It may not be cost effective for some of these Project Based Licensed Products to be manufactured in Japan for installation outside of Japan. SEI is able to seek specific Project Based Licenses from Pinnacle to manufacture some of the Project Based Licensed Products on site and in low cost countries.
2. **Project notifications by Sumitomo.**

- 2.1 In my first letter dated 17 September 2001, I advised shareholders of 20 notifications of VRB projects which Pinnacle has received from SEI.
- 2.2 I further clarify that in relation to the 20 projects, SEI has not provided to Pinnacle the results of any feasibility study or engineering costs estimates.
- 2.3 Only one of the 20 projects has resulted in firm orders, being the 42kw VRB system for load leveling in Italy. There is a real risk that, other than in relation to the Italian installation project, the projects notified in the table may not proceed.
- 2.4 The table provided was to demonstrate the level of interest in the technology developed by Pinnacle.

3. **Vantek's Share offer**

- 3.1 I refer to my second letter dated 17 September 2001 and my following comments;
"I am aware that some Pinnacle shareholders have found out that not all offers were the same and that there may be some difficulties in accepting shareholders in receiving their entitlements."

"Shareholders were not informed that under the Canadian Stock Exchange rules, they could withdraw their acceptance at any time prior to the issue of new certificates."

- 3.2 I made the statements based on information available to me at the time I wrote and distributed that letter. Having received full and proper information now in my possession, I now retract those statements.
- 3.3 I was provided with a copy of legal advice provided for Pinnacle by its solicitors after the date that my letters of 17 September 2001 had been distributed. The tenor of this advice was that Vantek had rectified the technical defect and that my understanding of the legal position was incorrect.

4. **Retraction of bullet point statements made in Second letter dated 17 September 2001.**

- 4.1 In my second letter dated 17 September 2001 I made the following statements;
"The effect of Vantek's involvement on Pinnacles Board has significantly hampered the company's progress on many matters including;

- The complete stalling of the company to develop an independent Electrolyte Policy, which is a mainstay of the commercialisation of our technology, while pursuing the Vantek electrolyte development.
- Extending and adopting frustrating and expensive procedures with respect to Reliable Power Inc. takeover and other matters without keeping the Company's independent directors informed on a timely basis.
- Treating our business partners with a degree of contempt with the aim of possibly to advantaging Vantek and to possibly harming Pinnacle.
- Releasing ASX announcements without any reference to the Board."

- 4.2 I retract these statements.
- 4.3 Shareholders should note that the ability of the Pinnacle Board to implement its strategy and conduct the Company's business has been frustrated and disrupted by the succession of takeover offers commencing with the bid by Federation in September 2000, the Reliable bid in March 2001, and the current Vanteck bid since 30 July 2001. At the same time shareholders have given notices for extraordinary general meetings, including the shareholders meeting convened by Vanteck now scheduled to be held on 15 October 2001. All of these events have effectively placed the Board in caretaker mode, significantly hampering Pinnacle in the conduct of its business.
- 4.4 During the Reliable takeover bid the Board of Pinnacle approved the establishment of a committee consisting of two nominated Board members. This was done on the basis that it was the most effective means of dealing with all the issues in relation to the Reliable bid by the Board. The two nominated Board members were given the authority to do all things legally necessary to defend the Reliable bid and the rest of the Pinnacle Board would be consulted to the extent that it was necessary. I note that certain of the ASX announcements were made without reference to the full Pinnacle Board although they were cleared by one or more members of the committee of the Board dealing with these matters.
- 4.5 Shareholders are reminded that you are entitled to withdraw any proxies you may have previously appointed and appoint new proxies up to 48 hours before the holding of the EGM. The EGM is now scheduled for 12:00 noon on 22 October 2001 as ordered by the Takeovers Panel on 11 October 2001. Therefore, you may withdraw proxies appointed and/or appoint new proxies by lodgment with the Company up until 12:00 noon on Saturday, 20 October 2001.

David Pethard
11th October 2001