



Australian Government

Takeovers Panel

# MEDIA RELEASE

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## TAKEOVERS PANEL REVISES GUIDANCE NOTE 1

### AND RELEASES GUIDANCE NOTE 22

The Takeovers Panel announced today that it has published two Guidance Notes:

- a rewritten version of Guidance Note 1 on Unacceptable Circumstances and
- a new Guidance Note 22 on Recommendations and Undervalue Statements.

The Panel issued a consultation draft of the Guidance Notes on 20 April 2010. It received 4 submissions and has taken them into account and made further changes.

#### Guidance Note 1 - Unacceptable Circumstances

Guidance Note 1 discusses when the Panel may make a declaration of unacceptable circumstances under section 657A.<sup>1</sup> It has been rewritten as part of the Panel's planned process of simplification and includes:

- a review of the currency and consistency of the guidance note
- an expanded history to show the derivation of s657A and to make it clear that the power to declare unacceptable circumstances is broad and
- a new example dealing with reverse takeovers.<sup>2</sup> The new example says the Panel will look at circumstances where a change of control, or a material effect on control by an issue of shares as consideration for a bid, either disenfranchises shareholders or does not meet the policy of chapter 6 (even if strictly it satisfies item 4 of section 611). This follows the recent decisions of *Gloucester Coal 01 and 01R*.<sup>3</sup>

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<sup>1</sup> References are to *the Corporations Act 2001* (Cth) unless otherwise indicated

<sup>2</sup> Paragraph 32(b), example 8

<sup>3</sup> [2009] ATP 6 and [2009] ATP 9

## Guidance Note 22 - Recommendations and Undervalue Statements

Guidance Note 22 discusses when the Panel may make a declaration of unacceptable circumstances because, for example, a director recommends that shareholders reject a bid relying on an undervalue statement, and the reasons for the recommendation (addressing also the undervalue statement) are not clearly disclosed, or it is not clearly stated that the reasons will be disclosed later (and in this case they must be disclosed no later than the time the target's statement is issued).

The Guidance Note follows the recent decisions of *Origin Energy Ltd*<sup>4</sup> and *Tully Sugar Ltd 01 and 01R*.<sup>5</sup>

The revised Guidance Notes, and the Public Consultation Response Statement, are available on the Panel's website.

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<sup>4</sup> [2008] ATP 23

<sup>5</sup> [2009] ATP 26 and [2010] ATP 1