



Australian Government

Takeovers Panel

MEDIA RELEASE

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Gladstone Pacific Nickel Limited 02 - Panel Declines to Make a Declaration of Unacceptable Circumstances

The Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 19 August 2011 by Robash Pty Ltd, a shareholder of Gladstone Pacific Nickel Limited, in relation to the affairs of Gladstone ([TP11/59](#)).

The application related to a prospectus lodged by Gladstone with ASIC on 12 August 2011 in relation to a proposed 11 for 1 non-renounceable rights issue at \$0.08 per share. Companies owned and controlled by Mr Clive Palmer currently own 56.4% of Gladstone (**Palmer Companies**). The applicant submitted, among other things, that the rights issue constituted unacceptable circumstances because:

- the offer ratio is punitive and there has been no attempt to mitigate the effect of the offer on shareholders who do not participate in the rights issue
- shareholders have not been adequately informed of the identity of persons who propose to acquire a substantial interest in Gladstone
- shareholders, other than Palmer Companies, are unlikely to have an equal opportunity to participate in the rights issue due to its ratio and pricing and
- an inappropriate procedure is being followed as a preliminary to compulsory acquisition of voting shares in Gladstone.

The Panel considered that Gladstone had not taken all reasonable steps to minimise the potential control effect of the rights issue and that the prospectus did not adequately disclose, among other things, the potential effect on control if no shareholders took up their rights (other than the Palmer Companies) and the intentions of the Palmer Companies as regards exercising their voting rights and should they become entitled to proceed to compulsory acquisition.

The Panel was minded to make a declaration of unacceptable circumstances in relation to the affairs of Gladstone and was minded to make orders that the rights issue not proceed unless the resulting acquisition by the Palmer Companies was approved by shareholders (other than the Palmer Companies).

However, on 9 September 2011, Gladstone announced on its website that it had withdrawn the prospectus. Subsequently, Gladstone requested and consented that ASIC issue a stop order in respect of the prospectus.

The Panel decided that Gladstone's withdrawal of the prospectus had removed the ground on which it was previously minded to declare that the rights issue was likely to lead to unacceptable circumstances in relation to the affairs of Gladstone. Accordingly, the Panel declined to make a declaration of unacceptable circumstances in relation to the affairs of Gladstone.

The Panel did not consider it against the public interest to decline to make a declaration of unacceptable circumstances.

The sitting Panel was Garry Besson, Peter Hay (sitting President) and Heather Zampatti.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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