



Australian Government

Takeovers Panel

MEDIA RELEASE

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CMI Limited - Federal Court Decision

The Takeovers Panel notes the decision of the Federal Court in *Tinkerbell Enterprises Pty Limited as trustee for The Leanne Catelan Trust v Takeovers Panel* handed down today.¹

Tinkerbell's application to the Federal Court was dismissed with costs.

On 22 February 2011, the Panel made a declaration of unacceptable circumstances in relation to an application dated 6 January 2011 by Mr Gerry Pauley and Mr Gordon Elkington, in relation to the affairs of CMI Limited (see [TP11/15](#)). On 25 February 2011, the Panel made final orders (see [TP11/16](#)). See background below.

At the request of Tinkerbell, the review Panel made interim orders staying the initial Panel's final orders 2, 3, 4 and 7 until the conclusion of the Federal Court proceedings (see [TP11/26](#)). As the matter is now concluded, the stay of orders is lifted.

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Background

The Panel considered that Ms Leanne Catelan and Mr Raymond Catelan were associated in respect of shares in CMI.

¹ [2012] FCA 1272

The Panel made final orders to the effect that:

- the 3,112,422 CMI shares (9.22%) acquired by Tinkerbell Enterprises Pty Ltd as trustee for The Leanne Catelan Trust on 23 November 2010 (**Sale Shares**) be vested in the Commonwealth on trust for Tinkerbell (order 1)
- ASIC must sell the Sale Shares and return the proceeds net of costs to Tinkerbell (orders 2 and 3)
- CMI and the associated parties must do all things necessary to give effect to the orders (order 4)
- the associated parties must not otherwise dispose of, transfer, charge or vote the Sale Shares (order 5)
- the Sale Shares are not counted for the purposes of the 3% creep exception in item 9 of section 611 unless the associated parties acquire some Sale Shares on market as part of the sell-down (if they have an existing capacity to 'creep' under item 9(b) of section 611) (order 6) and
- the associated parties must disclose their voting power in CMI and their association in a substantial holder notice (order 7).

On 10 March 2011, the review Panel declined to conduct proceedings on a review application by Tinkerbell and Leanne Catelan (see [TP11/21](#)).

On 7 April 2011, the Panel announced that it had been served with a Federal Court application for judicial review.