



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP16/06

Friday, 5 February 2016

The President's Club Limited 02 - Declaration and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to the remitted application dated 26 June 2012 of The President's Club Limited in relation to its affairs. The application had been remitted to the Panel by the Full Court of the Federal Court of Australia on 4 September 2015 (see [TP15/45](#)).

On 24 December 2015, the Federal Court extended the time for the Panel to make a declaration until the date 6 weeks from the date of the order.¹

Background

The President's Club is an unlisted public company with more than 50 members. It has been the subject of a previous Panel decision, which was set aside and the matter remitted for determination according to law.²

At the date of the application, each President's Club shareholder held ordinary shares (which are voting shares) and a corresponding villa interest.

In July 2011, Palmer Leisure Coolum Pty Ltd (**PLC**, formerly Queensland North Australia Pty Ltd) acquired 98% of Coeur de Lion Holdings Pty Ltd (**CDLH**), which owns all the shares in Coeur de Lion Investments Pty Ltd (**CDLI**). CDLI owns 3,107 shares (approximately 41.4%) in The President's Club.

In March 2012, PLC acquired 221 shares (approximately 2.9%) in The President's Club, taking its total voting power to approximately 44.3%.

PLC lodged a bidder's statement, supplementary bidder's statement and replacement bidder's statement with ASIC but 'withdrew' them without making any offers to shareholders.

¹ *Palmer Leisure Coolum Pty Ltd v Takeovers Panel* [2015] FCA 1498

² *Queensland North Australia Pty Ltd v Takeovers Panel (No 2)* [2015] FCAFC 128

Declaration

The Panel considers that the July 2011 acquisition of shares was made in contravention of section 606.³ That the acquisition contravened s606 is consistent with the findings of the Full Court of the Federal Court.⁴ The Panel considers that there are ongoing effects of the s606 contravention, which have not been remedied by PLC, that are unacceptable.

The Panel further considers that the March 2012 acquisitions, while not made in contravention of s606, were also unacceptable because reliance on item 9 of section 611 (the 'creep exception') was based on the July 2011 acquisition, which contravened section 606.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

Orders

The Panel considers that orders prohibiting the exercise of voting rights attaching to more than 20% of the shares available to be voted, taking into account the restriction on voting by its orders, are an appropriate remedy given the passing of time and the fact that the Act is concerned with control implications over 20%.

The Panel also considers that it should not restrict future 'creep' in accordance with item 9 of s611 except in two respects. First, there can be no creep for 6 months from the date the orders come into effect and second, the exception is to operate as if only 20% were owned and the additional shares held at the date of the order (that is, those that cannot be voted) do not exist.

The sitting Panel is Peter Day (sitting President), Michelle Jablko and Ian Jackman SC.

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

Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne VIC 3000
Ph: +61 3 9655 3597
allan.bulman@takeovers.gov.au

³ References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

⁴ *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68



Australian Government

Takeovers Panel

Attachment A

**CORPORATIONS ACT
SECTION 657A
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

THE PRESIDENT'S CLUB LIMITED 02

CIRCUMSTANCES

1. The President's Club Ltd (**TPC**) is an unlisted company with more than 50 members. Its capital is divided into 7,488 ordinary shares and 5 subscriber shares (the subscriber shares having no right to vote, to dividends or to participate in the net assets of the company on winding up).
2. Coeur de Lion Investments Pty Ltd (**CDLI**), a wholly owned subsidiary of Coeur de Lion Holdings Pty Ltd (**CDLH**), owns 3,107 ordinary voting shares in TPC (approximately 41.4%).
3. On or about 1 July 2011:
 - (a) Palmer Coolum Leisure Pty Ltd (**PLC**, formerly Queensland North Australia Pty Ltd) acquired 98% of the shares in CDLH and
 - (b) Closeridge Pty Ltd acquired 2% of the shares in CDLH. PLC and Closeridge Pty Ltd are companies associated with Mr Clive Palmer.
4. Accordingly, under section 608(3)(a) of the *Corporations Act 2001* (Cth) (the **Act**), or alternatively section 608(3)(b) of the Act, PLC acquired a relevant interest in the shares in TPC in which CDLI had a relevant interest. None of the exceptions in section 611 of the Act applied and the acquisition occurred in contravention of section 606 of the Act.
5. It appears to the Panel that the circumstances of the acquisition that occurred in contravention of section 606 are unacceptable:
 - (a) having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of TPC or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in TPC and

- (b) having regard to the purposes of Chapter 6 set out in section 602 and
 - (c) because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6.
6. Additionally, between 13 and 19 March 2012, PLC acquired a further substantial interest in TPC, being 221 shares (2.9%), taking its relevant interest in TPC shares to approximately 44.4%. To the extent that the acquisition of these shares satisfied the terms of item 9 of section 611, it was only by reason of the acquisition that occurred in contravention of section 606.
7. It appears to the Panel that the circumstances of the acquisition of the further substantial interest in TPC made in reliance on item 9 are unacceptable having regard to:
- (a) the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of TPC or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in TPC and
 - (b) the purposes of Chapter 6 set out in section 602.
8. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

EXTENSION OF TIME

9. On 24 December 2015, the Federal Court of Australia granted the Panel an extension of time under section 657B of the Act.

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of The President's Club Limited.

Alan Shaw
Counsel
with authority of Peter Day
President of the sitting Panel
Dated 2 February 2016



Australian Government

Takeovers Panel

Attachment B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

THE PRESIDENT'S CLUB LIMITED 02

The Panel made a declaration of unacceptable circumstances on 2 February 2016.

THE PANEL ORDERS

1. The Associated Parties must not exercise, or allow the exercise of, voting rights that attach to more than 1,040 of the 3,328 shares in TPC in which at the date of this order any of them has a relevant interest.
2. If, notwithstanding order 1, for some reason any voting rights over more than 1,040 of the 3,328 shares in TPC in which at the date of this order any of the Associated Parties has a relevant interest are exercised, TPC must disregard such votes.
3. None of the Associated Parties may:
 - (a) take into account any relevant interest or voting power that any of them have, or have had, in shares in TPC that by reason of these orders cannot be voted when calculating the voting power referred to in Item 9(b) of s611⁵ of a person six months before an acquisition exempted under Item 9 of s611 or
 - (b) rely on Item 9 of s611 earlier than six months after the date these orders come into effect. For avoidance of doubt, shares acquired in compliance with this order 3 may be voted.
4. In these orders the following terms have the corresponding meaning:

Associated Parties	CDLI, CDLH, Closeridge, PLC, Mr Clive Frederick Palmer and each of their respective associates
CDLH	Coeur de Lion Holdings Pty Ltd
CDLI	Coeur de Lion Investments Pty Ltd
Closeridge	Closeridge Pty Ltd

⁵ References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

PLC

Palmer Leisure Coolum Pty Ltd, formerly
Queensland North Australia Pty Ltd

TPC

The President's Club Limited

Alan Shaw
Counsel
with authority of Peter Day
President of the sitting Panel
Dated 5 February 2016