



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP19/29

Friday, 26 April 2019

## Yowie Group Ltd 01 & 02 – Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) after consideration of an application dated 27 March 2019 by Keybridge Capital Limited in relation to the affairs of Yowie Group Ltd (see [TP19/21](#)) and an application dated 11 April 2019 by Yowie in relation to its affairs (see [TP19/27](#)).<sup>1</sup>

### Background

Yowie is an ASX listed company (ASX:YOW). On 12 March 2019, Wilson Asset Management (International) Pty Ltd (**WAMI**) had a relevant interest and voting power in 19.73% of Yowie shares comprising 1.50% by operation of a direct shareholding and 18.23% through WAMI's relevant interests in Keybridge and HHY Fund (and those entities shareholdings in Yowie).

On 13 March 2019, Keybridge announced to ASX its intention to make an off-market takeover bid for all of the fully paid shares in Yowie. Between 13 and 27 March 2019, WAMI acquired Yowie shares, increasing its voting power from 19.73% to 32.17%. Between 2 and 10 April 2019, Keybridge acquired Yowie shares, increasing WAMI's voting power to 32.65%.

### Declaration

The Panel considered that the circumstances were unacceptable because they constitute or give rise to contraventions of s606<sup>2</sup> by WAMI and Keybridge and contraventions of the substantial holder provisions by WAMI.

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).

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<sup>1</sup> The Panel decided to hear both applications together under Regulation 16 of the *ASIC Regulations 2001* (Cth)

<sup>2</sup> Unless otherwise indicated, all statutory references are to the Corporations Act 2001 (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

## Orders

The Panel has made orders to the effect that the shares acquired in contravention of s606 are vested in ASIC for sale and that WAMI provide a corrective substantial holder notice in a form approved by the Panel.

The sitting Panel was Robin Bishop (sitting President), Tara Page and Neil Pathak.

The Panel will publish its reasons for the decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

Allan Bulman  
Director, Takeovers Panel  
Level 10, 63 Exhibition Street  
Melbourne VIC 3000  
Ph: +61 3 9655 3500  
[takeovers@takeovers.gov.au](mailto:takeovers@takeovers.gov.au)



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**Takeovers Panel**

**ANNEXURE A**

**CORPORATIONS ACT  
SECTION 657A**

**DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

**YOWIE GROUP LTD 01 & 02**

**CIRCUMSTANCES**

1. Yowie Group Ltd (**Yowie**) and Keybridge Capital Limited (**Keybridge**) are ASX listed companies incorporated in Australia.
2. HHY Fund (**HHY**) is an ASX listed registered management investment scheme.
3. Wilson Asset Management (International) Pty Limited (**WAMI**) is a company incorporated in Australia.
4. On 12 March 2019, WAMI had a relevant interest and voting power in 19.73% of Yowie shares comprising:
  - (a) 1.50% by operation of section 608(1)<sup>3</sup> through WAMI's direct holding of Yowie shares and
  - (b) 18.23% by operation of section 608(3)(a) through WAMI's relevant interests in Keybridge<sup>4</sup> and HHY<sup>5</sup>.
5. On 13 March 2019, Keybridge announced to ASX its intention to make an off-market takeover bid for all of the fully paid shares in Yowie.
6. Through a series of acquisitions of Yowie shares by WAMI between 13 and 27 March 2019, WAMI's voting power in Yowie increased from 19.73% to 32.17%, other than through one of the exceptions in section 611, resulting in contraventions of section 606.
7. WAMI did not give details of its deemed relevant interest in 18.23% of Yowie shares and other information as required by section 671B.
8. Through a series of acquisitions of Yowie shares by Keybridge between 2 April and 10 April 2019, WAMI's voting power in Yowie increased from 32.17% to 32.65%,

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<sup>3</sup> Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapters 6 to 6C have the meaning given in the relevant Chapter (as modified by ASIC)

<sup>4</sup> and, in relation to Keybridge, through sections 608(1)(b) and (c) as Keybridge is the investment manager of HHY

<sup>5</sup> held by Aurora Funds Management Limited in its capacity as responsible entity of HHY

other than through one of the exceptions in section 611, resulting in contraventions of section 606.

## **CONCLUSION**

9. It appears to the Panel that the circumstances outlined above are unacceptable because they constitute or give rise to contraventions of section 606 and, in the case of WAMI, section 671B.
10. 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).

## **DECLARATION**

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Yowie.

**Allan Bulman**  
**Director**  
**with authority of Robin Bishop**  
**President of the sitting Panel**  
**Dated 26 April 2019**



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## **ANNEXURE B**

# **CORPORATIONS ACT SECTION 657D ORDERS**

1. The WAMI Sale Shares are vested in the Commonwealth on trust for WAMI.
2. The Keybridge Sale Shares are vested in the Commonwealth on trust for Keybridge.
3. ASIC must:
  - (a) sell the Total Sale Shares in accordance with these orders and
  - (b) account to WAMI and Keybridge respectively for the proceeds of sale (on a pro rata basis), net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC and the Commonwealth (if any).
4. ASIC must:
  - (a) retain an Appointed Seller to conduct the sale and
  - (b) instruct the Appointed Seller:
    - (i) to use the most appropriate sale method to secure the best available sale price for the Total Sale Shares that is reasonably available at that time in the context of complying with these orders, including the stipulated timeframe for the sale and the requirement that none of:
      - (A) WAMI or its associates may acquire, directly or indirectly, any of the WAMI Sale Shares and
      - (B) Keybridge or its associates may acquire, directly or indirectly, any of the Keybridge Sale Shares
    - (ii) to provide to ASIC a statutory declaration that, having made proper inquiries, the Appointed Seller is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the Appointed Seller's functions in relation to the disposal of the Total Sale Shares

- (iii) unless the Appointed Seller sells Total Sale Shares on market, that it obtain from any prospective purchaser of:
    - (A) WAMI Sale Shares, a statutory declaration that the prospective purchaser is not associated with WAMI or its associates and
    - (B) Keybridge Sale Shares, a statutory declaration that the prospective purchaser is not associated with Keybridge or its associates and
  - (iv) to dispose of all of the Total Sale Shares within 3 months from the date of its engagement.
- 5. The Company, WAMI and Keybridge must do all things necessary to give effect to these orders, including:
  - (a) doing whatever is necessary to ensure that the Commonwealth is registered with title to the Total Sale Shares in the form approved by ASIC and
  - (b) until the Commonwealth is registered, complying with any request by ASIC in relation to the Total Sale Shares.
- 6. None of WAMI or its associates may, directly or indirectly, acquire any of the WAMI Sale Shares.
- 7. None of Keybridge or its associates may, directly or indirectly, acquire any of the Keybridge Sale Shares.
- 8. WAMI and its associates must not otherwise dispose of, transfer, charge or vote any WAMI Sale Shares.
- 9. Keybridge and its associates must not otherwise dispose of, transfer, charge or vote any Keybridge Sale Shares.
- 10. None of WAMI or its associates may:
  - (a) take into account any relevant interest or voting power that any of them had, or have had, in the WAMI Sale Shares when calculating the voting power referred to in Item 9(b) of s611 of the *Corporations Act 2001* (Cth), 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 these orders come into effect.
- 11. None of Keybridge or its associates may take into account any relevant interest or voting power that any of them had, or have had, in the Keybridge Sale Shares when calculating the voting power referred to in Item 9(b) of s611 of the

*Corporations Act 2001 (Cth)*, of a person six months before an acquisition exempted under Item 9 of s611.

12. Nothing in these orders obliges ASIC to invest, or ensure interest accrues on, any money held in trust under these orders.
13. Within two business days after the date after these orders, WAMI and other related persons<sup>6</sup> must give corrective notice of their respective substantial holdings in the Company in a form approved by the Panel.
14. Orders 3, 4, 5, 6 and 7 come into effect three business days after the date of these orders. All other orders come into effect immediately.
15. The parties to these proceedings and ASIC have the liberty to apply for further orders in relation to these orders.

#### **Interpretation**

16. In these orders the following terms apply.

<b>Appointed Seller</b>	an investment bank or stock broker
<b>ASIC</b>	Australian Securities and Investments Commission, as agent of the Commonwealth
<b>Company</b>	Yowie Group Ltd
<b>Keybridge</b>	Keybridge Capital Limited
<b>Keybridge Sale Shares on market</b>	1,054,148 ordinary shares in the issued capital of Company held by Keybridge in the ordinary course of trading on Australian Securities Exchange and not by crossing or special crossing
<b>Total Sale Shares</b>	the Keybridge Sale Shares and WAMI Sale Shares
<b>WAMI Sale Shares</b>	27,073,809 ordinary shares in the issued capital of Company held by WAMI
<b>WAMI</b>	Wilson Asset Management (International) Pty Limited

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<sup>6</sup> including EDWVIC Pty Ltd and Mr Geoffrey Wilson

**Allan Bulman**  
**Director**  
**with authority of Robin Bishop**  
**President of the sitting Panel**  
**Dated 26 April 2019**