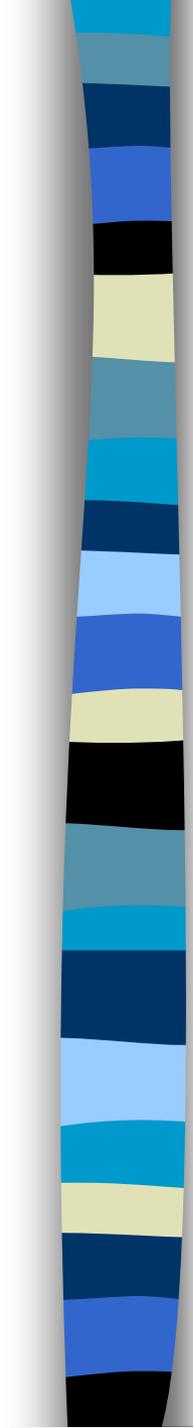


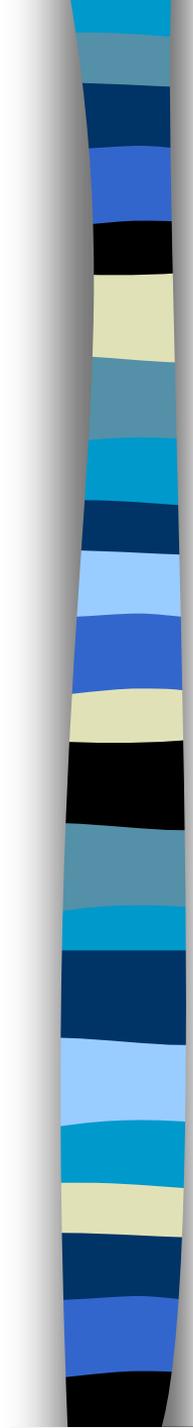
The Australian Takeovers Panel Two Years on.

Nigel Morris - Director



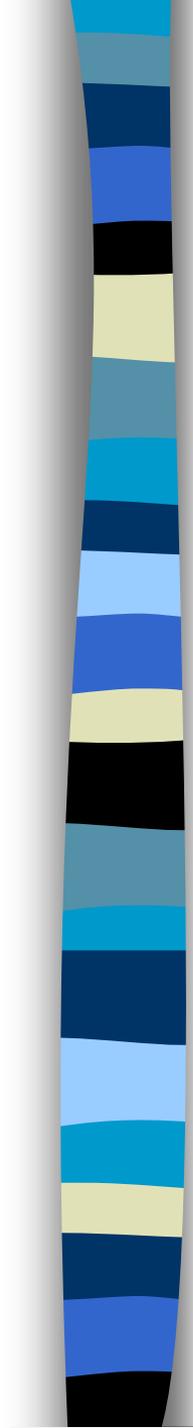
History of the Panel

- 1969 Eggleston Committee 2nd Interim Report
- 1981 CASA - NCSC section 60 power
- 1991 Corporations Law
 - Panel power to declare unacceptable conduct or acquisition
- 2000 CLERP
 - section 659B Dispute resolution role



Volume

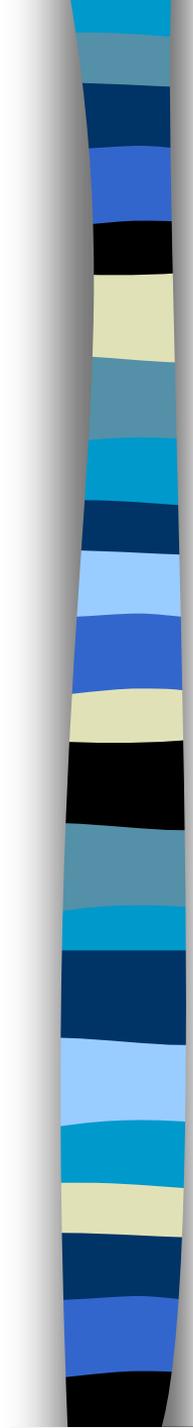
- NCSC - 11 s60 declarations 1981-1990
- ASC - 4 applications to the Panel 1991-2000
- Post CLERP
 - 2000 - 22
 - 2001 - 30
 - 2002 - 5
- Comparison with court volume?



Philosophy of the Panel

■ What?

- *“the main forum for resolving disputes about a takeover until the bid period has ended”* (s 659AA)
- Commercial resolution of disputes
- Finding out what’s wrong and fixing it
- Getting a takeover back on track
 - in real time



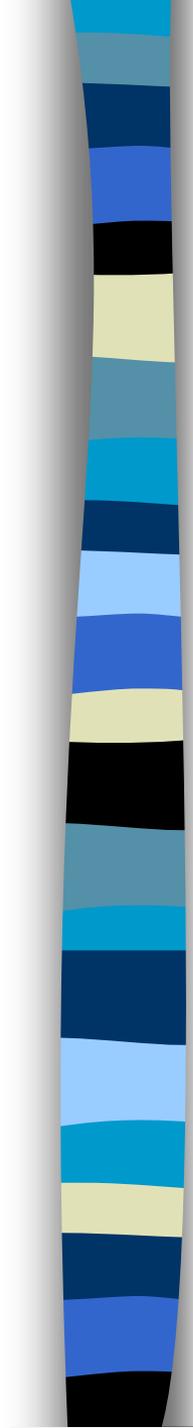
Philosophy of the Panel

■ Why?

- Flexibility, speed & certainty
- Avoid tactical litigation and legalism
- Reduce costs

And

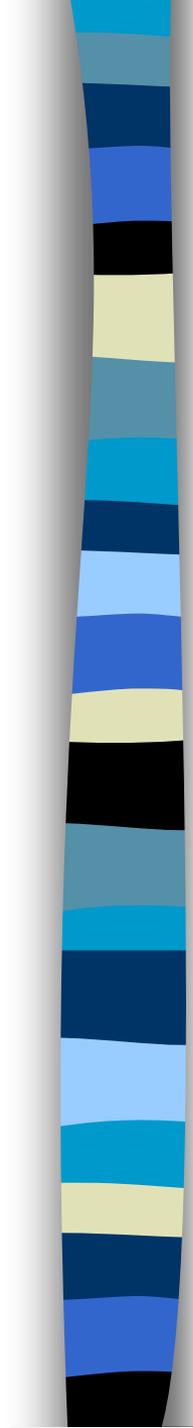
- Raise standards of documentation & behaviour generally
- Ensure clarity and equality of information as between shareholders and in the marketplace
- Encourage equal treatment of shareholders



Philosophy of the Panel

■ How?

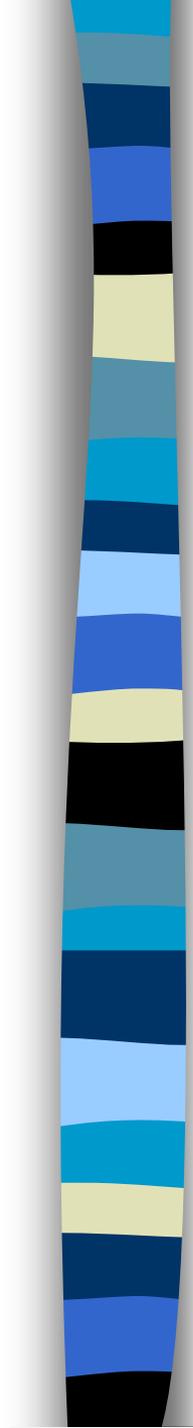
- Primary body dealing with takeover matters during a bid (s659B)
- Court proceedings can only be initiated by ASIC or Government during a bid (s659B)
- Court can stay its proceedings during a takeover bid (s659B(2))
- Only money damages awarded after Panel declines application (s659C)
- Review ASIC decisions (s656A)



Powers of the Panel

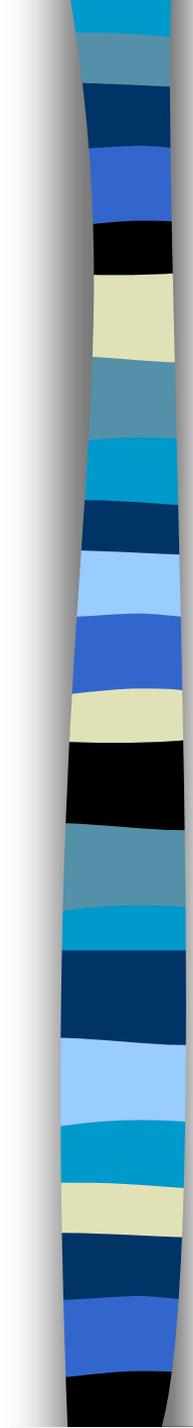
The Panel can make

- a declaration of unacceptable circumstances (s657A)
- a wide range of orders (s657D & s657E)
- rules to clarify or supplement Chapter 6 (s658C)
- procedural rules for its proceedings (s195 ASIC Act)
- decisions on ASIC modifications



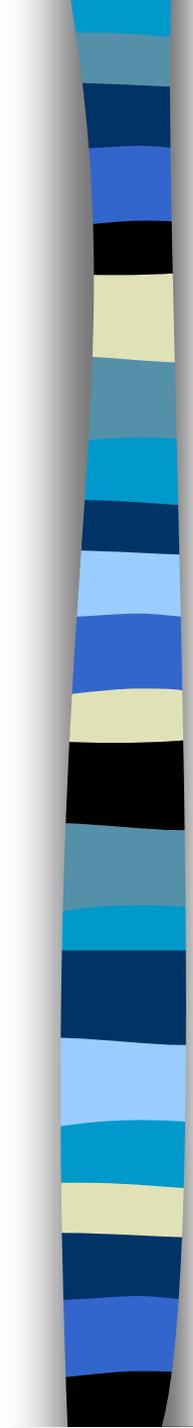
Unacceptable Circumstances (s657A)

- The circumstances must
 - relate to the “affairs of the company”
 - be unacceptable
 - having regard to their effect on
 - the **control, or potential control**, of that company or another company or
 - an acquisition of a **substantial interest** in that company or another company; or
 - because they constitute or give rise to a **contravention** of Chapter 6, 6A, 6B or 6C



Unacceptable Circumstances (s657A)

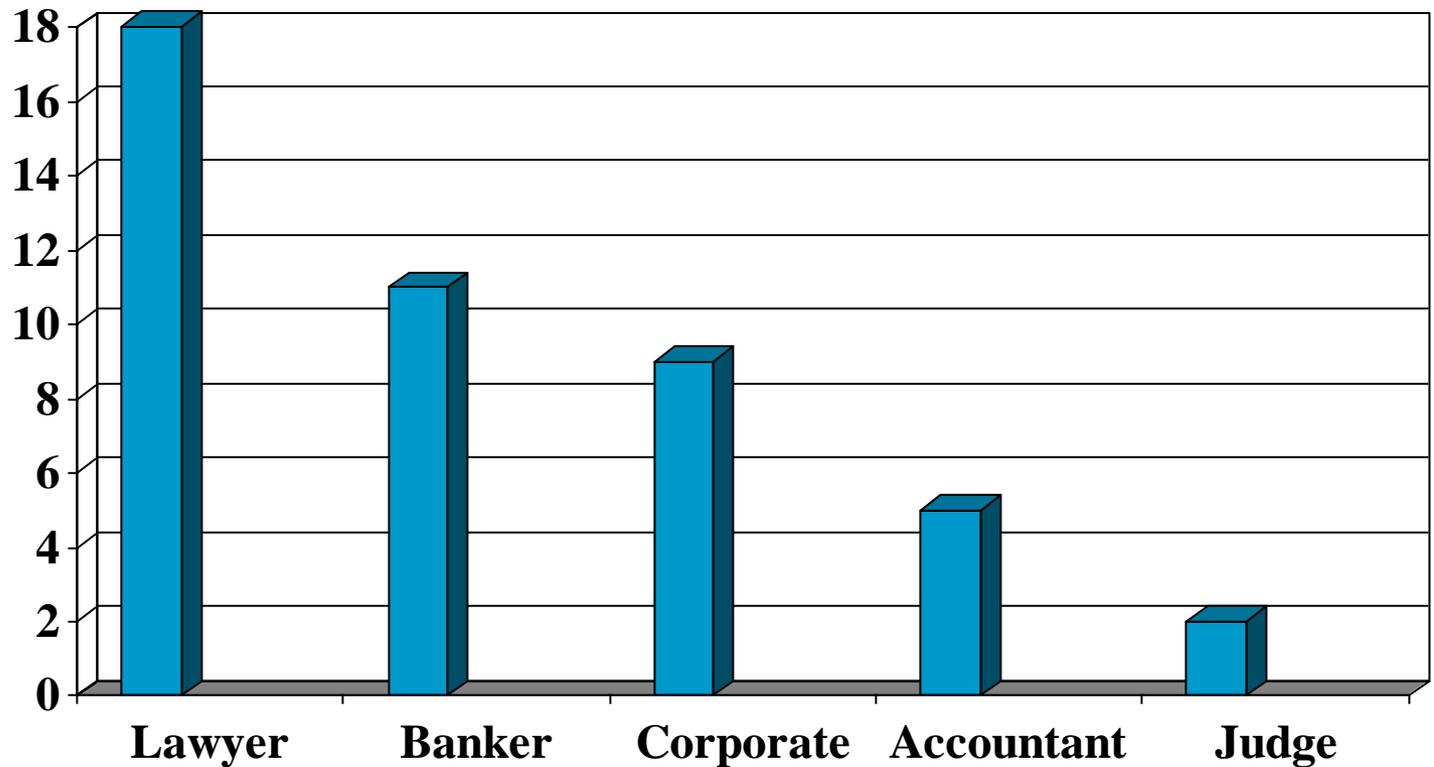
- Focus is first upon circumstances not first on conduct
 - Panel will look to the effects of the circumstances and may later look at the intention or conduct of the person who caused the circumstances to arise
- Focus is not primarily on legality
- Focus on Eggleston Principles
- Panel must consider the public interest



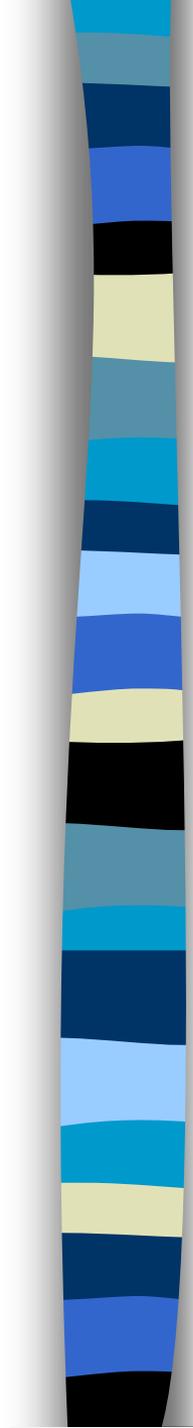
Who can apply?

- Previously only ASIC 4
- Now, any interested person
 - Bidder 24
 - Rival Bidder 11
 - Target 16
 - Shareholders 3
 - ASIC 3
 - Other 1

Current Members Jan 2002 (45)

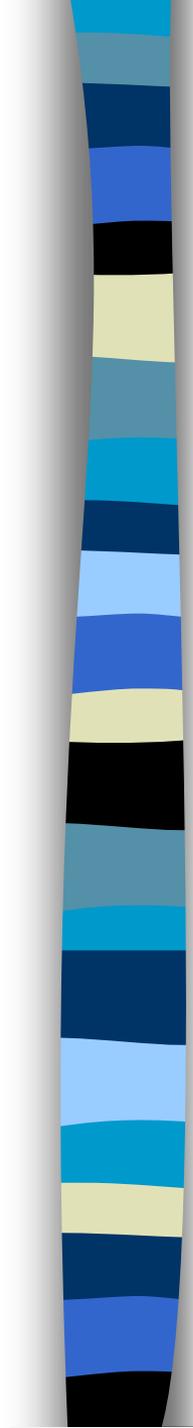


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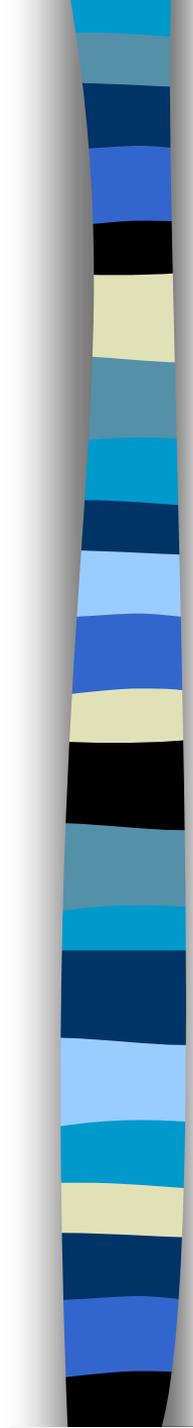
Executive

- Director
- Counsel
- Legal Secondees
- Office Manager
- Support, Policy, Liaison, Preparation
- Not delegates
- Lvl 47, 80 Collins St, Melbourne 3000



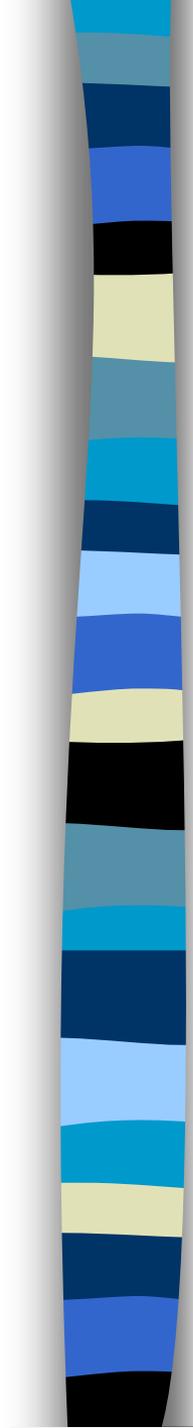
Panel Matters 2000 - (22)

- Infratil/AIF Nos. 1&2
- Email/Smorgon Nos 1-3
- IAMA/Futuris
- Pinnacle No 1
- Brickworks/GPG Nos 1&2
- QCT/Metcoal
- Advance/Mirvac
- St Barbara/Taipan
- Ashton/De Beers
- Taipan 1 - 6
- Pinnacle 2
- Realestate.com.au
- Taipan 7



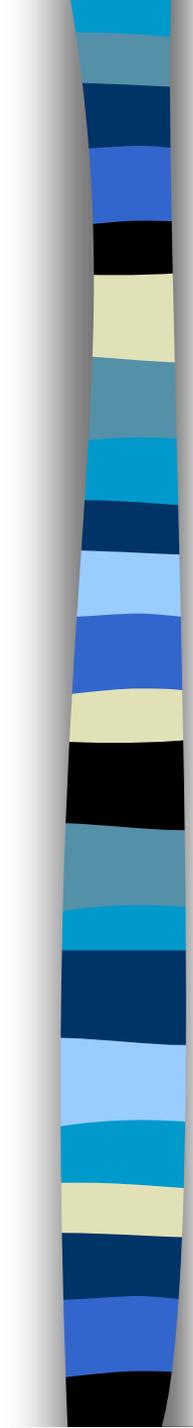
Panel Matters 2001 - (30)

- Pinnacle 03
- Taipan 8
- Taipan 9
- Taipan 10
- Vincorp
- Pinnacle 04
- Namakwa 01
- Pinnacle 05
- Namakwa 02
- Taipan11
- Pinnacle 06
- Pinnacle 07
- Alpha
- Namakwa 03 & 04
- Pinnacle 08
- ALG
- Bigshop 01, 02, 03
- Pinnacle 09 & 09(b)
- Pinnacle 10 & 11
- Normandy 1 - 6
- Broncos 01 & 2



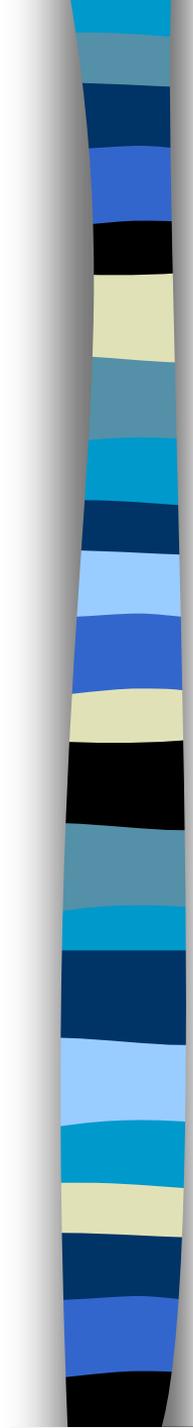
Panel Matters 2002 - (6)

- Broncos 03
- Normandy 07
- Focus Technologies
- Broncos 04
- Pasminco
- Precious Metals Australia
- Ballarat Goldfields



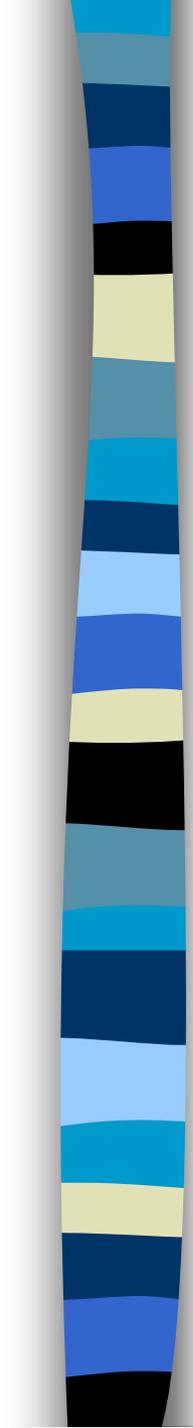
Analysis - Type of Applications

- Review of ASIC Decisions 6
 - Affirmed 3 - Overturned 2 - Current 1
- Unacceptable Circumstances 41
- Review of Panel Decisions 9
 - Affirmed 6 - Varied 3
- ASIC Referral 2



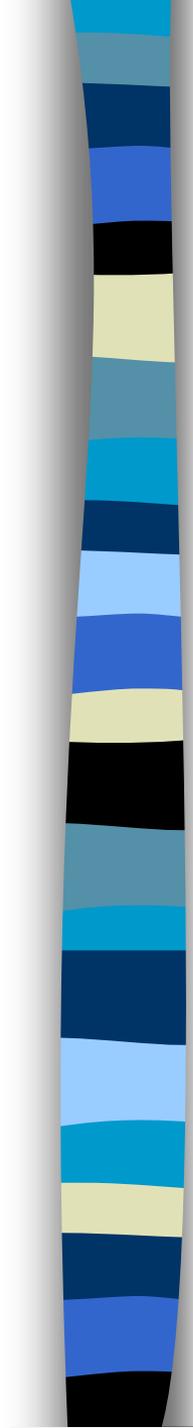
Grounds for Unacceptable Circumstance Applications

- efficient competitive informed market - 24
- identity of acquirer - 1
- reasonable time to consider - 1
- adequate information in documents - 26
- equality of opportunity - 6
- Other - 10



Analysis - Outcomes

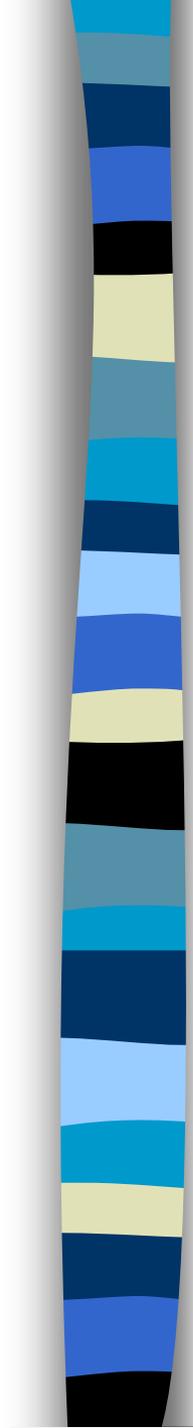
• No. Applications	57	
• Multiple applics	3 Bids =	28 of 57
• Conferences	7	Av =1 Day
• Declarations	6	
• Refusal to commence	5	
• Orders	6	
• Settlement	8 cases	
• Costs Orders	3	(all in 2001)



Process

- Application
- Convene three members
 - conflicts, availability, experience, etc
- Review - Reg 20 threshold
- Brief - Panel defines the landscape
- Submissions & Rebuttals - Parties
- Further questions from Panel
 - Conference, Supplementary brief
- Decision - Reasons
- Orders
- Post Mortem

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Policy

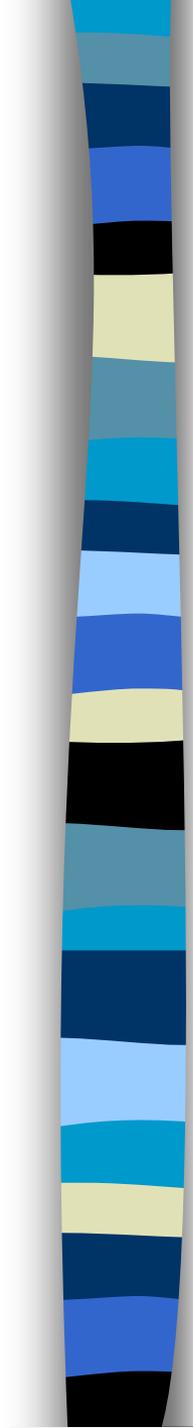
■ Published

- 1 Unacceptable Circumstances
- 2 Review of Decisions
- 3 Making Rules
- 4 Remedies and Enforcement
- 5 Restraining Documents
- 6 Break Fees
- Procedural Rules

■ Current Work

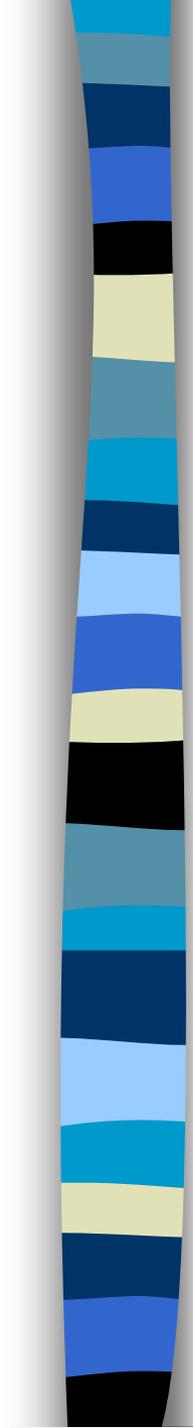
- Forecasts
- Costs
- Frustrating Action
- Conflicts
- Rulings
- Funding Arrangements

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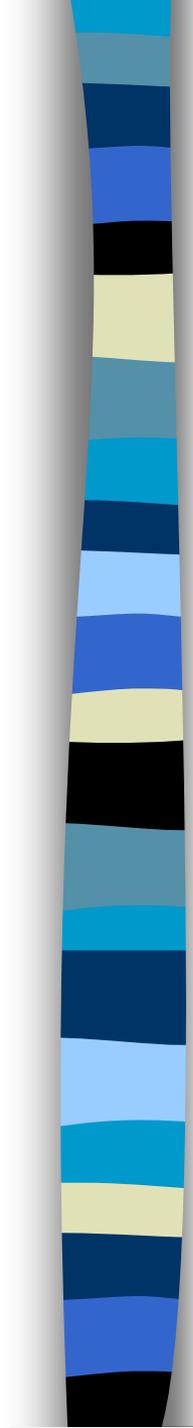
Panel Initiatives

- Web page containing
 - policies
 - procedures
 - decisions
- Post mortems after matters to get feedback
- Panel workshops and discussions to ensure consistency
- Liaison with practitioners



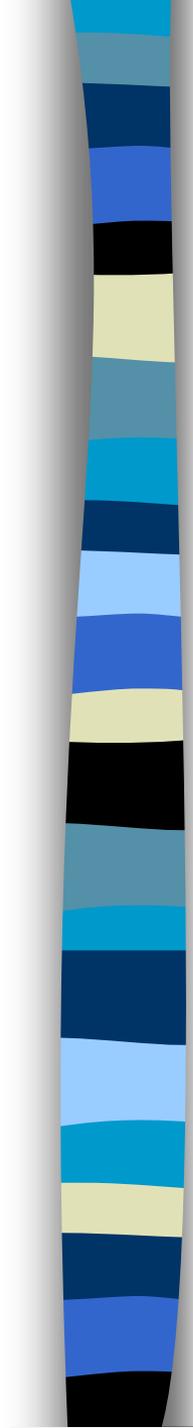
Implications of Panel for Takeovers

- Eggleston focus
 - if strictly legal focus - **you just don't get it**
- No strategic delay
- More negotiating with bidder/target
- Commercial resolutions
- Will require better disclosure
- No draconian penalties
- Perhaps more schemes of arrangement



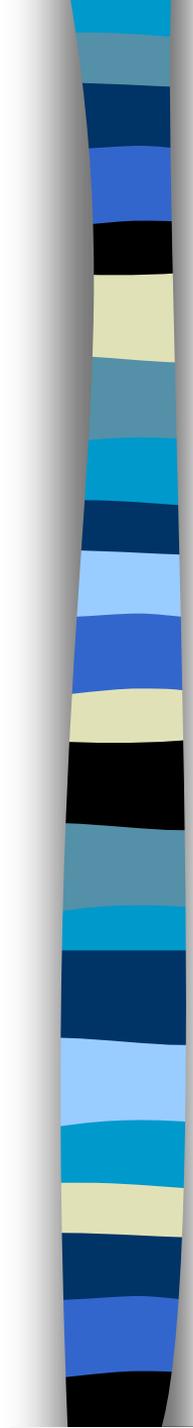
Future challenges for the Panel

- Consistency
 - Panel days, three members, post mortems
- Workload
- Constitutional challenge
- Jurisdictional interrelation with courts
 - chipping away
- Power
- Scope



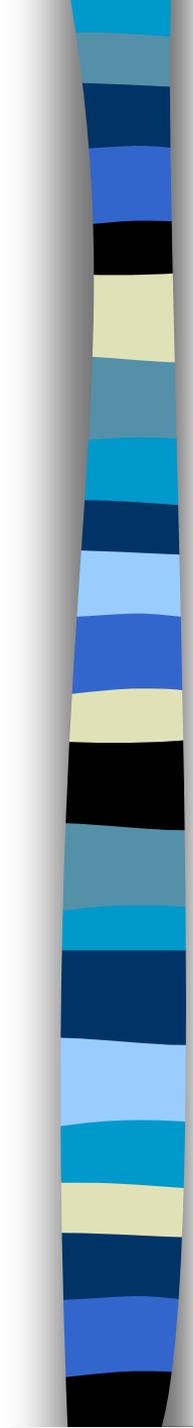
Conclusion

- To be fully effective the Panel must enjoy the support of the whole business community - Senator Chapman 12/5/99
- The Panel will be a test of the goodwill of the business community in Australia in taking some responsibility for its own actions - Mr Joe Hockey MP 3/6/99



Members

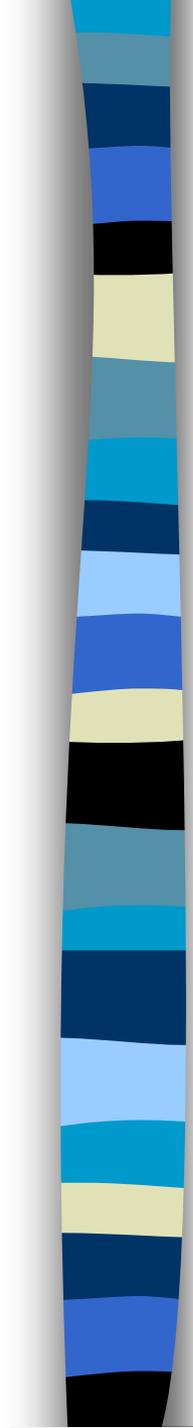
Name	Organisation	Location
■ Mr Simon McKeon, (President)	Macquarie Bank Limited	Melbourne
■ Ms Robyn Ahern	Company Director	Perth
■ Ms Ilana Atlas	Westpac Banking Corporation Ltd	Sydney
■ Ms Eliz. Alexander AM	PricewaterhouseCoopers	Melbourne
■ Justice Bob Austin	Supreme Court of NSW	Sydney
■ Dr Annabelle Bennett SC	Sydney Bar	Sydney
■ Mr Michael Burgess	University of South Australia	Adelaide
■ Mr Tony Burgess	Deutsche Bank	Melbourne
■ Ms Carol Buys	AMP Consulting P/L	Sydney
■ Mr Denis Byrne	Denis Byrne & Associates P/L	Brisbane
■ Mr Peter Cameron	Credit Suisse First Boston	Sydney
■ Ms Luise Elsing	Australian Stock Exchange	Sydney
■ Ms Kathleen Farrell	Freehills	Sydney
■ Mr David Gonski	Morgan Stanley Dean Witter	Sydney



Members

- Ms Teresa Handicott Corrs Chambers Westgarth Brisbane
- Mr Brett Heading McCullough Robertson Brisbane
- Ms Meredith Hellicar Company Director Sydney
- Mr Braddon Jolley Freehills Sydney
- Mr John King NZ Takeovers Panel Auckland
- Dr Tro Kortian University of Sydney Sydney
- Ms Alison Lansley Mallesons Stephen Jaques Melbourne
- Ms Irene Lee Company director Sydney
- Mr Kevin McCann Allens Arthur Robinson Sydney
- Ms Alice McCleary Deloitte Touche Tohmatsu Adelaide
- Ms Marie McDonald Blake Dawson Waldron Melbourne
- Ms Maria Manning Queensland Cotton Brisbane
- Ms Louise McBride Deloitte Touche Tohmatsu Sydney
- Ms Marian Micalizzi Company Director Brisbane
- Mr Simon Mordant Caliburn Partnership P/L Sydney

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Members

- Ms Robyn Pak-Poy Minter Ellison Adelaide
- Mr Chris Photakis KPMG Corporate Finance P/L Sydney
- Prof Ian Ramsay The University of Melbourne Melbourne
- Mr Scott Reid JPMorgan Sydney
- Ms Maxine Rich Consultant Sydney
- Ms Fiona Roche Estates Development Co. Perth
- Mr Trevor Rowe Salomon Smith Barney Sydney
- Justice Kim Santow Supreme Court of NSW Sydney
- Mr Jeremy Schultz Finlaysons Adelaide
- Ms Jennifer Seabrook Gresham Partners Perth
- Ms Celia Searle Wickham Chambers Perth
- Mr Leslie Taylor Commonwealth Bank of Aust. Sydney
- Mr Michael Tilley Merrill Lynch International Melbourne
- Mrs Nerolie Withnall Company Director Brisbane
- Ms Karen Wood BHP Billiton Melbourne
- Mr Peter Young ABN-AMRO Sydney

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