



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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No: 35/2009

Wednesday, 13 May 2009

## **Gloucester Coal Limited 01R – Variation to Orders**

The Panel has considered a request from Noble Group Limited on 11 May 2009 to vary the Panel's orders dated 29 April 2009, seeking clarification of paragraph 6 (which required the independent directors of Gloucester Coal Limited to consider any proposal made or announced for Gloucester as soon as practicable). After considering submissions from Noble, Gloucester and Whitehaven Coal Limited, the review Panel has varied its orders to require that:

- Gloucester release to the market no later than 5.00 pm on Monday 18 May 2009, the independent expert's report referred to in Gloucester's ASX market release dated 12 May 2009.
- The independent directors of Gloucester consider and announce their view as to whether the Noble bid is a superior proposal to Gloucester's bid for Whitehaven by no later than 5.00 pm on Wednesday 20 May 2009.
- The independent directors of Gloucester consider and announce their view as to whether any other proposal made or announced is a superior proposal as soon as practicable after it is made or announced.
- The condition in Gloucester's bid for Whitehaven to the effect that no superior proposal for Gloucester is made or announced cannot be waived before Wednesday 3 June 2009.
- Gloucester vary its offers for Whitehaven shares so that they close not before 7.00 pm on Thursday 11 June 2009.
- Noble's proposed offers for Gloucester shares not close before 5.00 pm on Tuesday 16 June 2009.

The variation to the review Panel's orders is Annexure A.

The sitting Panel was Michael Ashforth, Geoff Brunson and Alison Lansley (sitting president).

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**Corporations Act  
Section 657D(3)  
Variation of Orders**

**Gloucester Coal Limited 01R**

**PURSUANT TO**

1. Section 657D(3) of the Corporations Act 2001 (Cth) and
2. A declaration of unacceptable circumstances in relation to the affairs of Gloucester Coal Limited (**Gloucester**) on 29 April 2009

**THE PANEL VARIES**

The orders made on 29 April 2009 by:

1. in order 2,  
deleting "*The condition in paragraph 1 is not waivable for 21 days after the first offer under Gloucester's bid for Whitehaven is made*"  
and substituting "*The condition in paragraph 1 is not waivable before Wednesday 3 June 2009*"
2. in order 6,  
deleting "*The independent directors of Gloucester must consider any proposal made or announced as soon as practicable*"  
and substituting "*(a) By no later than 5.00 pm (Sydney time) on Wednesday 20 May 2009, the independent directors of Gloucester must consider and announce their view as to whether the Noble bid is a superior proposal for Gloucester and*  
*(b) the independent directors of Gloucester must consider and announce their view as to whether any other proposal made or announced is a superior proposal for Gloucester as soon as practicable after it is made or announced*"
3. adding order 7,  
"*By no later than 5.00 pm (Sydney time) on Monday 18 May 2009, Gloucester must release to the market the independent expert's report referred to in its ASX market release dated 12 May 2009.*"
4. adding order 8,  
"*Gloucester vary its offers for Whitehaven shares so that they close not before 7.00 pm (Sydney time) on Thursday 11 June 2009.*"

5. adding order 9,

*“Noble’s proposed offers for Gloucester shares not close before 5.00 pm (Sydney time) on Tuesday 16 June 2009.”*

**Alan Shaw**  
**Counsel**  
**with authority of Alison Lansley**  
**President of the Sitting Panel**  
**Dated 13 May 2009**