

Takeovers Panel

Brief - [Matter Name]

- (f) if you believe that there are material errors of fact, or additional facts that should be taken into account, raise them after dealing with the relevant question
- (g) provide a copy of your submissions² to the Panel through the data room for this matter.³ Instructions for uploading documents to the data room are attached in Attachment B (**Instructions for Uploading and Presenting Documents**)
- (h) the timetable for submissions is:

Event	Deadline (see regulations 28 and 34)
Submissions on brief	[insert time] (Melbourne time) [insert date]
Rebuttals on submissions	[insert time] (Melbourne time) [insert date]

- (i) other parties will not be able to view your submissions in the data room and you will not be able to view other parties' submissions in the data room until the Panel executive provides such access. Access will typically be provided to those who have lodged submissions or indicated they are not making submissions⁴ within [30] minutes after the deadline. The Panel executive will notify parties when documents become available
- (j) documents uploaded to the data room will not be viewed by the Panel before the deadline. You can add, remove or replace documents until that time. The ability to add, remove or replace documents will be disabled immediately after the deadline
- (k) documents must be uploaded to the data room as Microsoft Office word (.doc or .docx), excel or PDF files, unless otherwise agreed with the Panel executive. Instructions for uploading, presenting and labelling documents are set out in the Instructions for Uploading and Presenting Documents

Important information

3. Please note:

- (a) the procedures you must follow in relation to access to and use of the data room are set out in Attachment C (**Data Room Protocol**). You must confirm that you have read, understood and agree to be bound by the Data Room Protocol in order to access the data room each time you use it. If you have any queries or

² References to submissions also include references to rebuttals on submissions (if any) for the purposes of paragraphs 2(a), (b), (g) and (i) and the footnotes to those paragraphs

³ Submissions will only be accepted by email in exceptional circumstances with prior approval of the Panel executive

⁴ If you will not be making submissions, you must indicate this by following the instructions in Part E of Attachment B. If, by the due time, you fail to upload submissions and fail to indicate that you do not intend to make submissions, you must contact the Panel executive for instructions. You will not receive access to other parties' submissions until the status of your submissions has been determined

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issues with any aspect of the Data Room Protocol, please let the Panel executive know prior to accessing the data room

- (b) the Panel may issue a supplementary brief and, if relevant, will issue a supplementary brief regarding declaration and/or orders
- (c) the *Takeovers Panel Procedural Rules 2020* (Cth) apply
- (d) the Panel will not accept submissions in confidence without prior approval.⁵ Please contact the Panel executive if you want to make a submission in confidence. Failure to do this may result in the submission being circulated to all parties
- (e) if you are claiming client legal privilege, you must identify the basis for the claim, including:
 - (i) the circumstances in which the communication took place and
 - (ii) the topics to which the instructions or advice were directed⁶
- (f) if costs become an issue in the proceedings, the Panel will invite submissions at the relevant time
- (g) information included in submissions may be disclosable by a (listed) party under ASX Listing Rule 3.1
- (h) if you want to raise any procedural fairness point, you must do so as soon as it arises or you risk losing the opportunity to have it addressed
- (i) if the timetable does not give you a reasonable opportunity to make submissions, let us know as soon as you become aware of pending problems. Explain why you require additional time and provide an estimate of how long you will need to respond⁷
- (j) no conference is planned, but you may (if you consider a conference is necessary) make submissions on this. The Panel will decide whether a conference would assist it after reviewing submissions
- (k) you may offer an undertaking to resolve the matter at any point in the Panel's process.⁸

⁵ See rules 10(6) and 11

⁶ See rule 11(2); *AWB v Cole (No 5)* (2006) 155 FCR 30 at [44], *Kennedy v Wallace* (2004) 142 FCR 185 at [12]-[21], *NCA v S* (1991) 29 FCR 203 at 211

⁷ Rule 10(9)

⁸ See Guidance Note 4 - Remedies General at [9] and [39] and rule 11(3)

Confidentiality and media canvassing

4. Parties are reminded:
- (a) of the confidentiality obligations in rule 18 and the restrictions on media canvassing in rule 19
 - (b) that they have given undertakings regarding compliance with the confidentiality obligations in rule 18 and the restrictions on media canvassing in rule 19
 - (c) any communication from, and any documents provided by, the Panel to parties is confidential (including a communication or document provided for comment or which is marked as a draft) unless or until the Panel publishes such information.⁹ The Panel's publicly published documents may be used provided the use is not misleading.

Obligation to inform the Panel

5. As noted in the Panel's process letter, a person must not give information to the Panel that is false or misleading in a material particular.¹⁰ This obligation is reinforced in the *Takeovers Panel Procedural Rules 2020* (Cth), which require documents to be accompanied by any relevant material (unless already provided)¹¹ and states:

*A person who does not have personal knowledge of a matter included in a submission must make appropriate inquiries that the matter is true and not misleading.*¹²

Yours faithfully

Allan Bulman
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Takeovers Panel
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⁹ Rule 18(2)

¹⁰ Section 199 of the *Australian Securities and Investments Commission Act 2001* (Cth). It is a defence to a prosecution if the defendant believed on reasonable grounds that the information was true and not misleading

¹¹ Rule 9(1)(f)

¹² Rule 22(2)

Attachment A

- A. The following definitions apply in this brief:
- B. In this brief, where questions identify a company, the question incorporates a reference to any director, officer or adviser of that company. Your answer should identify the individuals involved and the capacity of their involvement.
- C. In this brief, parties are directed to the questions relevant to them. ASIC may respond to any question.
- D. The Panel has, at this stage, decided to examine and seek submissions on the matters from the application described below. Following its consideration of the submissions and rebuttals, the Panel may issue a supplementary brief to consider other matters raised in the application or other issues arising from submissions and rebuttals.

Sample Only

Questions

1. Question 1
 - (a) Question 1(a)
 - (i) Question 1(a)(i)

2. Question 2
 - (a) Question 2(a)
 - (i) Question 2(a)(i)

Sample Only

Attachment B

INSTRUCTIONS FOR UPLOADING AND PRESENTING DOCUMENTS

Sample Only

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Attachment C

DATA ROOM PROTOCOL

Sample Only