



PRO-FORMA APPLICATION SECTION 657C(2) – DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

How to use this pro-forma application

While an application under section 657C does not need to be in a particular form, the Panel has approved this pro-forma application to aid an applicant in preparing its application to the Panel for a declaration of unacceptable circumstances.

In accordance with rule 12(1) of the *Takeover Panel Procedural Rules 2020* (Cth), the items marked in this pro-forma application with an asterisk (*) must be included in an application under section 657C of the *Corporations Act 2001* (Cth) to be considered a valid application.

While not essential for a valid application, applicants are encouraged to provide the other information set out in this pro-forma application (where possible) to aid the Panel in considering the application.

Where submissions are made in support of the application (i.e. the information to be provided in sections 2.3 (submissions), 3 (orders) and 4 (request for extension of time) below), the submissions in total should not exceed 10 A4 pages in minimum 10 point font.

Further information on the form of an application can also be found in the Panel's Procedural Guidelines (available on the Panel's website).

If this pro-forma application is used to prepare your application, please delete this cover page prior to submitting your application to the Panel.

APPLICATION TO THE TAKEOVERS PANEL
SECTION 657C(2) – DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

Date: *Insert date of application*

Applicant: *Insert name of applicant*

In relation to the affairs of:* *Insert company*

Other parties: *Identify the other parties*

1. OVERVIEW OF APPLICATION

Aspect	Summary
Declaration basis	<i>Insert section relied on (e.g. sections 657A(2)(a), (b) and/or (c))</i>
Circumstances*	<ol style="list-style-type: none"> 1. <i>Insert a summary of the relevant circumstances</i> 2. <i>State when the circumstances first occurred (or where a precise date is unknown, a time period in which the circumstances first arose)</i>
Why the circumstances are unacceptable*	<i>Identify the effect of the circumstances (section 657A(2)) and explain the key reasons as to why the circumstances are alleged to be unacceptable</i>
How are the Applicant's interests affected by the circumstances?	<i>Provide details of how the Applicant's interests are affected by the relevant circumstances identified above pursuant to section 657C(2)</i>
What (if any) contravention of chapters 6-6C?	<i>If none identified, write NA</i>
Interim order(s) sought*	<i>Insert interim orders sought. If none, write NA</i>
Final order(s) sought*	<i>Insert final orders sought</i>
Other proceedings*	<i>To the extent the applicant is aware, provide details of any proceedings threatened or commenced in another forum which are directly or indirectly related to the circumstances</i>

2. DETAILS OF APPLICATION

2.1. Background

Insert all relevant matters of fact, so far as they are known to the applicant. If possible, include a diagram of the corporate/ shareholding relationships.

2.2. Chronology

Insert a chronology of key events relevant to the application.

Date	Event

2.3. Submissions

Set out separately each claim and the submissions/reasons to support it. Include the policy considerations, submissions on law or the exercise of discretion relevant to the claim.

2.3.1. Issue 1: (e.g., misleading information regarding funding of bid)

Detail first claim and submissions

2.3.2. Issue 2: (e.g., misleading information regarding value of bid)

Detail second claim and submissions

3. ORDERS

Set out separately each interim order and final order sought and the submissions to support it. Include the policy considerations and unfair prejudice submissions relevant to the order (section 657D(1)) and identify how the requested orders protect rights or interests (section 657D(2)(a)) or ensure the takeover bid proceeds as it should have (section 657D(2)(b)).

4. REQUEST FOR EXTENSION OF TIME

(If a determination by the Panel under section 657C(3)(b) is required – otherwise delete) State why it is desirable to commence proceedings more than two months after the circumstances first occurred (e.g., whether the circumstances were concealed or otherwise unknown to the applicant and what, if any, adverse effect the circumstances have had or would have).

5. PROCEDURAL

5.1. Fees

Undertake to pay the application fee (an invoice will be issued and emailed to the applicant along with electronic funds transfer and credit card payment options).

5.2. Information about the Applicant

Please provide as much information as possible as the information is used to assess conflicts when appointing a sitting Panel. If information becomes available after filing the application, please inform the Panel executive.

	Applicant
Principal shareholders (i.e. substantial holders or controllers)	
Directors	
Legal advisers	
Financial advisers	
Auditors	
Principal financiers	
Name of any person with whom, or on whose behalf, the applicant is acting in relation to the application or the matters described in it	

5.3. Information about interested persons*

Applicants are required to list any person who may be an “interested person” in their application. Under the Panel’s Procedural Rules 2020, an “interested person” includes a person entitled to be heard by the Panel before it makes a decision sought by the application or a person to whom a proposed declaration relates or a proposed order would be directed. If a person is named in the application, the applicant should carefully consider whether the person is an “interested person”.

To the extent known, please provide as much information as possible on each interested person identified as the information is used to assess conflicts when appointing a sitting Panel. If information becomes available after filing the application, please inform the Panel executive.

Interested person	Principal shareholders (if known, please specify) – for a listed company, provide substantial holders; for a private company, provide major shareholders or controllers	Directors (if known, please specify)	Advisers (if known, please specify) – legal advisers, financial advisers, financiers and auditors

5.4. Service on interested persons

Confirm that interested persons and ASIC have been (or will be) given a copy of this application. Please provide the Panel executive proof once the application has been served (i.e. by forwarding the relevant email/s to takeovers@takeovers.gov.au).

5.5. Notice to Become a Party*

Complete a Notice to Become a Party (available on the Panel’s website) to accompany the application.

If a party wishes to be legally represented by its commercial lawyers, the form of the request for the Panel’s consent is also included in the Notice to Become a Party.

6. ANNEXURES

Insert list of documents annexed to the application. Include any documents that the Panel’s Procedural Rules 2020 require to accompany the application (including market announcements or documents lodged with ASIC that are referred to in the application).

Annexure	Description
1	
2	
3	

Signed: _____

Name and authority: _____