

EXPLANATORY STATEMENT

Issued by authority of the Takeovers Panel

Australian Securities and Investments Commission Act 2001

Takeovers Panel Procedural Rules 2020

Section 195 of the *Australian Securities and Investments Commission Act 2001* provides that the Takeovers Panel may determine the procedural rules to be followed in Panel proceedings.

The purpose of the *Takeovers Panel Procedural Rules 2020* (the **Rules**) is to remake and improve the operation of the *Procedural Rules to be followed in Panel Proceedings (made on 12 April 2010) (F2010L00948)* (the **Sunsetting Rules**) before they sunset. Under the *Legislation Act 2003*, instruments such as the Sunsetting Rules automatically cease to have effect, or ‘sunset’ after 10 years, unless further action is taken to extend their operation, such as remaking the instrument.

The Sunsetting Rules were originally due to sunset on 1 October 2020. However, a six month deferral was granted under the *Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020 (F2020L00895)* on 8 July 2020. The Sunsetting Rules are now due to sunset on 1 April 2021.

As with the Sunsetting Rules, the Rules set out the procedure to be followed in Panel proceedings. The objectives of the Rules are to promote timely and cost-effective completion of matters before the Panel, not unnecessarily delaying commercial transactions, procedural fairness and obtaining the best available information.

The Rules apply unless the Panel as constituted in relation to a particular matter determines or directs otherwise.

The Rules remake and simplify the Sunsetting Rules by removing the ‘guidance’ (which currently appears as notes under the Sunsetting Rules) from the ‘rules’ themselves. The ‘guidance’ has been incorporated into a separate Procedural Guidelines document which the Takeovers Panel plans to release when the Rules become effective. The Rules also improve the Sunsetting Rules by simplifying language and restructuring provisions for ease of navigation. These changes do not affect the substantive meaning or operation of the provisions.

On 2 October 2020, the Takeovers Panel released the exposure draft of the Rules for public comment. The exposure draft was published on the Takeovers Panel’s website (www.takeovers.gov.au) and comments from interested persons were sought by 23 October 2020.

The Takeovers Panel received 3 submissions in response. Consistent with the Takeovers Panel’s published policy on responding to submissions, the Takeovers Panel has prepared a Public Consultation Response Statement which sets out the Takeovers Panel’s response to the public consultation process and its conclusions on the main comments received from respondents. A copy of this paper will be available on the Takeovers Panel’s website.

In addition to the formal consultation on the Rules, parties are always invited to discuss a completed matter with the Panel Executive and a Panel member who was not involved in the matter to discuss the conduct of the proceedings and Panel

processes. Feedback received in these meetings helps the Panel develop its processes and has been considered in remaking the Rules.

Details of the Rules are set out in [Attachment A](#).

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Rules commence on 1 April 2021.

Regulation impact assessment

Prior to the making of the Rules and in accordance with the Office of Best Practice Regulation's Guidance Note on sunseting instruments, the Takeovers Panel self-assessed that the Sunseting Rules were operating effectively and efficiently, and therefore a Regulation Impact Statement was not required. This assessment was informed by the public consultation on the exposure draft Rules.

Statement of compatibility with human rights

A statement of Compatibility with Human Rights is set out in [Attachment B](#).

ATTACHMENT A

Details of the Takeovers Panel Procedural Rules 2020

Part 1 – Preliminary

Rule 1 provides that the title of the instrument is the *Takeovers Panel Procedural Rules 2020* (the **Rules**).

Rule 2 provides for the Rules to commence on 1 April 2021.

Rule 3 provides that the Rules are made under the *Australian Securities and Investments Act 2001*.

Rule 4 provides that the *Procedural Rules to be followed in Panel Proceedings (made on 12 April 2010) (F2010L00948)* are repealed but continue to apply to an application made to the Panel before the Rules come into effect.

Rule 5 sets out the definitions which apply to the Rules.

Part 2 – Overview

This part sets out the objectives of the Rules and provides that the Rules apply unless the Panel as constituted in relation to a particular matter determines or directs otherwise.

Part 3 – Documents

This part sets out the requirements regarding the form of documents intended for the Panel, details of the persons to whom documents must be provided and when information or documents may be withheld from a party.

Part 4 – Applications

This part sets out the requirements for making a valid application and the requirements for having an application withdrawn.

Part 5 – Parties

This part sets out how a person can become a party to proceedings (including by providing a Notice to Become a Party to the Panel) and the requirements relating to legal representation in Panel proceedings.

Part 6 – Confidentiality and Publicity

This part sets out an obligation not to use or disclose any confidential information provided to a person in proceedings. It also sets out an obligation on parties not to canvass in any media any issue that is before the Panel until the proceedings are determined or the time period to review the Panel's decision has expired (whichever is longer).

Part 7 – Material before the Panel

This part sets out the procedures for providing submissions. It also details material upon which the Panel can act and requirements relating to conferences.

Part 8 – Decision

This part specifies the date of a decision of the Panel.

Part 9 – Court referrals

This part deals with the referral by the Panel of a question of law to the Court and a referral by the Court of a decision to the Panel for review.

Part 10 – Panel and Executive

This part sets out procedures in relation to a potential conflict of interest of a member of the Panel and the role of the Panel Executive.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Takeovers Panel Procedural Rules 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument sets out the procedural rules to be followed in Panel proceedings. The objectives of the procedural rules are to promote timely and cost-effective completion of matters before the Panel, not unnecessarily delaying commercial transactions, procedural fairness and obtaining the best available information.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.