



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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No: TP23/33

Wednesday, 25 October 2023

## **Whitehaven Coal Limited – Panel Receives Application**

The Panel has received an application from Whitehaven Coal Limited (ASX: WHC) (**Whitehaven**) in relation to its affairs. The application concerns an alleged failure by Bell Rock Capital Management LLP (**Bell Rock**) to disclose a derivative interest it holds in Whitehaven.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

### **Details**

On 18 October 2023, Whitehaven announced that it had executed definitive sale agreements with BHP Group and Mitsubishi Development Pty Ltd (BMA) to acquire 100% of BMA's interests in the Daunia and Blackwater coal mines. Whitehaven submits that Bell Rock has previously written to Whitehaven in relation to the proposed acquisition, including to raise various questions and concerns.

Whitehaven submits that:

- at various times since May 2023 Bell Rock has represented to Whitehaven that it holds a combined physical and derivative interest in Whitehaven shares of approximately 11%
- Bell Rock has not publicly disclosed its interest in accordance with the requirements of the Panel's Guidance Note 20: *Equity Derivatives* and
- Bell Rock has misled shareholders by omission by stating in a letter to Whitehaven shareholders on 12 October 2023 that it "*manage[s] just under 5% of WHC stock*".

Whitehaven submits that Bell Rock's non-compliance has become more acute since 12 October 2023 as a result of Bell Rock seeking to exercise control or influence over the affairs of Whitehaven, including by:

- writing to Whitehaven's shareholders urging them to vote against certain resolutions at Whitehaven's annual general meeting scheduled for 26 October 2023, including to grant incentive plan awards to the managing director and
- launching a media campaign under the branding of "Fair Shareholder Returns" urging shareholders to vote against those same resolutions and also resolutions to elect or re-elect three directors at the annual general meeting.

Whitehaven seeks interim orders that (in summary) Bell Rock disclose the derivative interests it holds in Whitehaven shares and that unless such disclosure is made, the votes cast on the Whitehaven shares in which Bell Rock has a relevant interest be disregarded at Whitehaven's upcoming annual general meeting.

Whitehaven seeks final orders that Bell Rock lodge a notification in accordance with Guidance Note 20 in a form acceptable to the Panel.

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