



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/41

Monday, 16 May 2022

DRA Global Limited – Orders

The Panel has made final orders (Annexure A) in relation to an application dated 21 March 2022 by Haydn von Maltitz in relation to the affairs of DRA Global Limited (DRA) (see [TP22/24](#)).

Background

On 9 May 2022, the Panel made a declaration of unacceptable circumstances in relation to the affairs of DRA (see [TP22/39](#)). In particular the Panel considered (among other things) that:

- by no later than 17 February 2022, Messrs Hodgkinson, Naylor, Smith and Dowding were associated for the purpose of controlling or influencing the composition of DRA's board and the conduct of DRA's affairs
- as a result of the association between Messrs Hodgkinson, Naylor, Smith and Dowding, the voting power of each of them increased to approximately 11.27%
- Messrs Hodgkinson, Naylor and Smith and each shareholder providing a voting undertaking (the **Other Associated Shareholders**) were associated for the purpose of controlling or influencing the composition of the board of DRA
- as a result of the association between Messrs Hodgkinson, Naylor and Smith and each Other Associated Shareholder, the voting power of each of Messrs Hodgkinson, Naylor and Smith increased above 20%
- in addition, Messrs Hodgkinson, Naylor and Smith acquired a relevant interest in the shares of each Other Associated Shareholder and breached section 606 and
- Messrs Hodgkinson, Naylor, Smith and Dowding had breached section 671B by failing to disclose their aggregate voting power in DRA as a result of their association and changes to their aggregate voting power as a result of the voting undertakings.

The Panel found that DRA was aware of the breaches but did not bring an application to the Panel.

The Panel also considered that the market had not been adequately informed, or informed in a timely manner, about these matters.

Orders

The Panel has made orders that (in effect):

1. Messrs Alistair Hodgkinson, Darren Naylor, James Smith and Brian Dowding disclose in the form of a substantial holder notice their association in relation to DRA, including, in the case of Messrs Alistair Hodgkinson, Darren Naylor and James Smith, their association the Other Associated Shareholders.
2. In the event Messrs Alistair Hodgkinson, Darren Naylor, James Smith and Brian Dowding are of the view that they no longer are associated with each other or (if applicable) the Other Associated Shareholders, they disclose in the form of a substantial holder notice such information, including how and when their association ceased.
3. DRA disclose, in an ASX announcement, the Panel's decision, DRA's knowledge of the circumstances found to be unacceptable and provide an update of DRA's management and operating model.
4. Each of Messrs Alistair Hodgkinson, Darren Naylor, James Smith and Brian Dowding and their associates* be restricted from:
 - a) requisitioning a DRA shareholder meeting for 6 months
 - b) being appointed as director of DRA for a period of 6 months and
 - c) exercising their voting rights in shares in DRA for a period of 6 months.

* Messrs Alistair Hodgkinson, Darren Naylor, James Smith and Brian Dowding have submitted that the voting undertakings have ended and their association with the Other Associated Shareholders has ceased.

The Panel is still considering submissions from the parties as to whether a costs order should be made.

The sitting Panel was Kelvin Barry, Jeremy Leibler (sitting President) and Tara Page.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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Takeovers Panel

**ANNEXURE A
CORPORATIONS ACT
SECTION 657D
ORDERS**

DRA GLOBAL LIMITED

The Panel made a declaration of unacceptable circumstances on 9 May 2022.

THE PANEL ORDERS

1. As soon as practicable after approval by the Panel of draft notices provided to the Panel reflecting any changes requested by the Panel (with draft notices to be provided to the Panel within five business days of the date of these orders):
 - (a) Alistair Hodgkinson, Darren Naylor and James Smith must give to DRA and the ASX, either separately or combined:
 - (i) a notice in the form of ASIC Form 603 “Notice of initial substantial holder” and, if applicable, a notice in the form of ASIC Form 604 “Notice of change of interests of substantial holder”, disclosing:
 - (A) the existence and nature of their association and their association with Brian Dowding,
 - (B) the existence and nature of their association with the Other Associated Shareholders,
 - (C) copies of any document setting out the terms of any relevant agreement that contributed to the situation giving rise to the need for disclosure, including (but not limited to) the Notices and the Voting Undertakings,
 - (D) any transaction undertaken during the period covered by the notice and
 - (E) any other information required by an ASIC Form 603,
 - (ii) if any or all of Alistair Hodgkinson, Darren Naylor and James Smith are of the view that they no longer are associated with each other or with Brian Dowding or with the Other Associated Shareholders, in relation to DRA, a notice in the form of ASIC Form 605 “Notice of ceasing to be a substantial holder” or, if applicable, a notice in the

form of ASIC Form 604 "Notice of change of interests of substantial holder", disclosing:

- (A) how and when the association ceased,
 - (B) copies of any document evidencing the ceasing of the association, including (but not limited to) the Release from Undertaking and
 - (C) any other information required by an ASIC Form 605 or, if applicable, an ASIC Form 604, and
- (iii) an explanatory covering letter to accompany the notices referred to in paragraphs 1(a)(i) and 1(a)(ii) and
- (b) Brian Dowding must give to DRA and the ASX:
- (i) a notice in the form of ASIC Form 604 "Notice of change of interests of substantial holder", disclosing:
 - (A) the existence and nature of his association with Alistair Hodgkinson, Darren Naylor and James Smith,
 - (B) copies of any document setting out the terms of any relevant agreement that contributed to the situation giving rise to the need for disclosure,
 - (C) any transaction undertaken during the period covered by the notice and
 - (D) any other information required by an ASIC Form 604,
 - (ii) if Brian Dowding is of the view that he is no longer associated with Alistair Hodgkinson, Darren Naylor and James Smith, in relation to DRA, a notice in the form of ASIC Form 604 "Notice of change of interests of substantial holder", disclosing:
 - (A) how and when the association ceased,
 - (B) copies of any document evidencing the ceasing of the association and
 - (C) any other information required by an ASIC Form 604 and
 - (iii) an explanatory covering letter to accompany the notices referred to in paragraphs (1)(b)(i) and (1)(b)(ii).
2. As soon as practicable after approval by the Panel of a draft ASX announcement provided to the Panel reflecting any changes requested by the Panel (with the

draft ASX announcement to be provided to the Panel within five business days of the date of these orders), DRA must make the ASX announcement:

- (a) explaining the Panel's declaration and orders, DRA's knowledge of the circumstances found to be unacceptable and DRA's role in the proceedings and
- (b) providing an update of:
 - (i) any changes to the senior leadership arrangements since DRA's announcement dated 11 March 2022, explaining why those changes have been made,
 - (ii) any progress on the executive search and
 - (iii) any progress on the review of DRA's operating model,

and send a copy of that announcement to DRA shareholders (via the method of communication recorded with DRA's share registry for each DRA shareholder).

3. For a period of 6 months from the date of these orders, each Associate and his associates must not provide a notice of intention to move a resolution to remove a director of DRA, requisition or call a general meeting of DRA to consider resolutions for the removal or appointment of a director, or otherwise nominate for appointment a director to the DRA board.
4. For a period of 6 months from the date of these orders, DRA must not:
 - (a) put before a general meeting of DRA any resolution to appoint as a director a person who has, at any time before the date of these orders, been nominated for appointment as a director of DRA by an Associate or his associates and
 - (b) otherwise appoint any Associate or a nominee of any Associate to the DRA board.
5. For 6 months from the date of these orders, each Associate and his associates must not exercise, or allow the exercise of, and DRA must disregard, their voting rights in shares in DRA in respect of any resolution for the appointment or removal of a director of DRA.
6. All references to "associates" in Orders 3, 4 and 5 refer to associates existing at any time after the date of these orders.
7. In these orders, the following definitions apply:

Associates

Alistair Hodgkinson, Darren Naylor, James Smith and Brian Dowding

DRA	DRA Global Limited
Notices	the s203D notice dated 17 February 2022 and the s249D notice dated 18 February 2022 provided to DRA
Other Associated Shareholders	the DRA shareholders that entered Voting Undertakings
Release from Undertaking	document dated 28 February 2022 and signed by Alistair Hodgkinson, Darren Naylor and James Smith releasing the relevant DRA shareholders from their obligations under the Voting Undertakings
Voting Undertakings	the deeds of irrevocable undertakings signed by DRA shareholders on or around 18 February 2022 in favour of <i>“the consortium of DRA shareholder (sic) represented by James Smith, Darren Naylor, and Alistair Hodgkinson”</i>

Tania Mattei
General Counsel
with authority of Jeremy Leibler
President of the sitting Panel
Dated 16 May 2022