



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP25/51

Monday, 30 June 2025

Emu NL 03 - Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (**Annexure A**) in relation to an application dated 16 May 2025 by Wayburn Holdings Pty Ltd in relation to the affairs of Emu NL (see [TP25/33](#)).

Background

Emu is an ASX-listed company (ASX code: EMU). On 23 January 2025, Emu received a section 249D notice from a group of shareholders (**Requisitioning Shareholders**) seeking to convene a general meeting to consider resolutions to:

- remove two of Emu's three directors, Mr Peter Thomas (Chairman) and Mr Roland Bartsch¹ and
- appoint as Emu directors, Mr Keith Rowe and Mr John Anderson.

The Requisitioning Shareholders disclosed in a substantial holder notice their association in relation to the s249D requisition and voting power in Emu of 8.89%.

The Emu Board convened an extraordinary general meeting (**EGM**) for 18 March 2025, later postponed twice, and ultimately held on 14 May 2025.

The notice of meeting for the EGM contained a proxy form that did not include a personalised name, address or holder number, and did not request a holder number. However, shareholders were provided with an additional proxy form² that was prepopulated with voting directions marked "AGAINST" the resolutions, which *did* include a personalised name, address and holder number.

On the day of the rescheduled EGM on 14 May 2025, Emu issued 17,647,057 shares (**New Shares**) to four placees, representing 8.35% of Emu's post-placement capital and the Emu board resolved that shares on the register as at 5pm (AWST) were

¹ Emu's announcement also attached a notice under section 203D notice of intention to move resolutions to remove Mr Thomas and Mr Bartsch

² For which the incremental cost of printing and distribution was paid by Mr Thomas and Mr Bartsch

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eligible to vote – the same time that the EGM was scheduled to start. The market was not informed of the voting status of these shares.

The Panel considered that:

- The actions of the Emu directors in issuing the New Shares to the Placees, and the timing, manner and quantum of issue, facilitated the acquisition of a substantial interest in Emu by one or more Placees that the Emu directors could reasonably expect would be voted at the EGM and would likely be voted in support of the incumbent directors.
- The timing of the placement had the potential to distort voting at the EGM.

The Panel also found (among other things) that:

- Emu did not update or clarify the record date for voting following the postponements of the EGM.
- By not facilitating access to proxy forms that included the necessary shareholder identification information, other than proxy forms that were prepopulated with voting directions marked “AGAINST” the resolutions, Emu made it more difficult for shareholders to vote in favour than against the resolutions.
- There was confusion over the accuracy and integrity of proxies and voting results over an extended period, from the original scheduled EGM on 18 March 2025 to beyond the 14 May 2025 date on which the meeting was eventually held and beyond the commencement of the Panel proceedings on 28 May 2025.
- The overall manner in which the EGM was conducted, including the two postponements, the placement on the day of the EGM and the lack of clarity and disclosure with regards to Emu’s several recounts of the proxies, did not give Emu shareholders or the market a sufficient basis for confidence as to the outcome of the EGM and the subsequent composition of the Emu Board, preventing or inhibiting the acquisition of control over Emu shares taking place in an informed market.
- One of the placees, Northmead Holdings Pty Ltd, failed to lodge a substantial holder notice within the required timeframe, in breach of section 671B³.

Declaration

The Panel considered that the circumstances were unacceptable:

³ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6, 6A or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

1. having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
- (a) the control, or potential control, of Emu or
 - (b) the acquisition, or proposed acquisition, by a person of a substantial interest in Emu or
2. in the alternative, having regard to the purposes of Chapter 6 set out in section 602 or
3. in the further alternative, because they constituted, constitute, will constitute or are likely to constitute a contravention of sections 657E and 671B.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

Orders

The Panel is considering what final orders, if any, it will make.

The sitting Panel is Stephanie Charles (sitting President), Alberto Colla and John McGlue.

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

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Australian Government

Takeovers Panel

ANNEXURE A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

EMU NL 03

BACKGROUND

1. Emu NL (**Emu**) is an ASX-listed company (ASX code: EMU).
2. On 23 January 2025, Emu announced receipt of a section 249D¹ request to call a meeting (**s249D Notice**) to consider resolutions to:
 - (a) remove two of Emu's three directors, Mr Peter Thomas (Chairman) and Mr Roland Bartsch,² and
 - (b) appoint as Emu directors, Mr Keith Rowe and Mr John Anderson.

The s249D Notice was given by Emu shareholders (**Requisitioning Shareholders**) who had the previous day given a substantial holder notice disclosing an association by reason of the s249D Notice and voting power in Emu of 8.89%.

3. On 11 February 2025, the Emu Board convened a general meeting (**EGM**) to be held on 18 March 2025 in response to the s249D Notice. The Emu Board unanimously recommended that shareholders vote against all resolutions. The notice of meeting (**Notice of Meeting**) stated that "*Pursuant to a determination under regulation 7.11.37 of the Corporations Regulations 2001 (Cth), the persons eligible to vote at the Meeting are those registered as Shareholders at 5:00 pm AWST on Sunday, 16 March 2025*" (**Record Date**).
4. The Notice of Meeting contained a proxy form that did not include a personalised name, address or holder number, and did not request a holder number. However, shareholders were provided with an additional proxy form³ that was prepopulated with voting directions marked "AGAINST" the

¹ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6, 6A or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

² Emu's announcement also attached a notice under section 203D notice of intention to move resolutions to remove Mr Thomas and Mr Bartsch

³ For which the incremental costs of printing and distribution was paid by Mr Thomas and Mr Bartsch

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resolutions, which *did* include a personalised name, address and holder number.

5. On 12 March 2025, Emu issued 1,222,222 shares to a corporate advisory firm for services rendered in relation to the s249D Notice. The letter of engagement between Emu and the corporate advisory firm provided that if Emu elected to pay in shares, the shares shall be issued prior to the EGM so that they could be voted at the EGM.
6. On 18 March 2025, the Emu Board announced it had postponed the EGM to 16 April 2025 pursuant to clause 44.4 of Emu's Constitution.
7. On 14 April 2025, the Emu Board further postponed the EGM under clause 44.4 of Emu's Constitution to 14 May 2025 at a time and location to be advised.

CIRCUMSTANCES

8. On 16 April 2025, Emu announced that the EGM would be held at 5:00 pm AWST on Wednesday 14 May 2025 and stated that, pursuant to section 250B, proxy voting would be accepted up to 48 hours before that meeting, namely up to 5:00 pm AWST on Monday 12 May 2025. The Emu Board advised that postponement of the EGM was considered necessary whilst it awaited the decision of the Takeovers Panel in *Emu NL*.⁴ The Notice of Meeting was not otherwise updated or supplemented, no new proxy forms were provided, and the announcement made no reference to the Record Date.
9. At 12:53pm (AWST) on Wednesday 14 May 2025, the day of the EGM, the Emu Board met via telephone by consent on short notice. Draft minutes of the meeting noted:

The Board resolved that applications for shares at \$0.017 (being at least 75% the 15 day VWAP) to raise up to \$300,000 be accepted and the shares be issued forthwith subject to receipt of cleared funds.

The meeting closed at 1.04pm

10. At 3:07pm (AWST) on the day of the EGM, Emu announced the issue on the same date of 17,647,059⁵ ordinary fully paid Emu shares (**New Shares**) in an Appendix 2A application for quotation of the securities.
11. At 3:12pm (AWST) on the same day, Emu stated in a Placement and Cleansing Notice released to ASX that:
 - (a) it had agreed to place the New Shares "at \$0.017 per share to sophisticated and professional investors to raise \$300,000" and
 - (b) "Funding from the placement will be applied to exploration within the Company's exploration projects and general working capital".

⁴ [2025] ATP 11

⁵ 17,647,057 shares were issued. The release contained a typographical error

The announcement did not specify whether the New Shares were eligible to be voted at the EGM later that day.

12. The New Shares were issued to four placees (**Placees**) as follows:

Placee	New Shares (number)	New Shares (% post dilution fully paid shares)
Horn Nominees Pty Ltd <Horn Super Fund a/c>	2,941,176	1.39%
Robert Peter van der Laan	2,941,176	1.39%
Northmead Holdings Pty Ltd <The Greenwell Family a/c> (Northmead)	8,823,529	4.18%
Rec (WA) Pty Ltd	2,941,176	1.39%
TOTAL	17,647,057	8.35%

13. At 4:54pm (AWST) on the same day, the Emu Board met via telephone by consent on short notice. Draft minutes of the meeting noted:

Discussion ensued in relation to the point at which shares on the register are eligible to vote at the EGM being held today.

RESOLVED that shares on the register at 5:00pm AWST be eligible to be voted.

14. At 5:00pm (AWST) on the same day, the EGM was scheduled to start. At 5:25pm (AWST), after a delay in registering members, the EGM was declared open.

15. The Chairman described the proceedings at the meeting in an email to his fellow directors sent Thursday, 15 May 2025 at 7:21am (AWST), as “a disorderly process” and proceeded in that email to state:

The meeting was not opened for nearly 30 minutes after due. By then I still did not have the proxy numbers. The meeting was then held in abeyance pending the proxy numbers being provided. When they were I was confused as one set of numbers only was provided (no abstains) and I thought that the votes were not identical on all proxies. After pause I was assured by Rudolf that the numbers I was given were correct an [sic] applied to each resolution (that is the same numbers for each resolution). These numbers were disclosed as required by the law.

The vote was then referred off to a poll and the meeting closed.

...

Late in the evening it was disclosed to me that the numbers that had been disclosed to the meeting were wrong in any event as they included all the votes on

the shares issued yesterday – obviously those shares were not be [sic] voted by proxy.

...

It appears to me the registrar will take a considerable time to sort the mess....

16. Later that morning, Emu entered into a trading halt to be lifted no later than 19 May 2025.
17. On 16 May 2025, the Emu Board met to discuss the EGM, among other things.
18. On 19 May 2025, Emu announced the proxy votes and results of the poll at the EGM. The announcement also stated that:

... on the day of the shareholders' meeting, EMU issued new fully paid shares by way of a placement. The need for a fund raising by way of a share placement has long been budgeted and was certainly required. For the record, each of the four resolutions would still have failed even if the votes on these new shares had not been included.

19. On 21 May 2025, after seeking submissions from the parties on the proposed interim orders, the President of the Panel made interim orders under which Emu was to provide to the Panel executive electronic copies of all proxy forms received in connection with the EGM, including any proxies that were disallowed and the basis for disallowance (**Proxy Information**) by 12pm on 22 May 2025 (**Interim Orders**). Under the Interim Orders, Emu was to notify all parties once it had complied with the request to provide the Proxy Information. Emu provided such confirmation on 28 May 2025.
20. Despite having already announced the voting results of the EGM on 19 May 2025, Emu determined an internal recount was necessary to respond to the Application, which was undertaken between 26 May 2025 and 31 May 2025. The Registry was still providing proxies that were previously uncounted (and then password protected) on a continuing but sporadic basis until 28 May 2025 at 12.09pm.
21. On 3 June 2025, Emu submitted to the Panel that as part of a recount, 68 proxies were disallowed⁶ (compared to 44 proxies disallowed⁷ in the original count), representing over 30% of all proxies provided for the EGM.
22. On 13 June 2025, Emu submitted to the Panel that as part of a further recount, 52 proxies were disallowed⁸ (compared to 34 proxies disallowed⁹ in the original count), representing over 23% of all proxies provided for the EGM.

⁶ Including 27 superseded or revoked proxies

⁷ Including 21 superseded or revoked proxies

⁸ Including 12 superseded or revoked proxies

⁹ Including 12 superseded or revoked proxies

23. The fact of internal recounts and the details of any internal recount have not been disclosed to the market at the time of this declaration.
24. On 17 June 2025, Emu announced that Mr Bartsch had resigned as a director of Emu and was replaced by Mr Oliver Douglas.

Contravention of section 671B

25. One of the Placees, Northmead, was previously a substantial holder with voting power of 5.58%. Northmead had not given an updated substantial holder notice at the date of the Application.¹⁰
26. In contravention of section 671B, Northmead failed to give the information required by subsection 671B(1)(b) within 2 business days after it become aware of the information.

Contravention of section 657E

27. Emu's delay in providing the Proxy Information under the President's Interim Orders contravened section 657E.

EFFECT

28. Considering the whole of the material, and drawing appropriate inferences, the Panel considers that the Emu directors should reasonably have expected that:
- (a) The Placees, or some of them, were likely to vote their New Shares at the EGM
 - (b) The Placees, or some of them, were likely to support the incumbent Emu directors and
 - (c) Some shareholders and market participants (other than the Placees) could assume that the Record Date for the EGM would either be:
 - (i) 16 March 2025, as disclosed in the Notice of Meeting or
 - (ii) 48 hours before the scheduled commencement of the EGM, consistent with how the Record Date was originally set in the Notice of Meeting.
29. By not updating or clarifying the Record Date on 16 April 2025, when Emu announced that the EGM would be held on 14 May 2025, Emu may have deterred persons (other than the Placees) from acquiring shares, or seeking to vote shares they had acquired, after 16 March 2025.

¹⁰ Northmead's notice of change of interests of substantial holder – disclosing an increased voting power of 8.43% and 17,823,531 votes – appeared on ASX on 28 May 2025

30. By not facilitating access to proxy forms that included the necessary shareholder identification information, other than proxy forms that were prepopulated with voting directions marked "AGAINST" the resolutions, Emu made it more difficult for shareholders to vote in favour than against.
31. The actions of the Emu directors in issuing the New Shares to the Placees, and the timing, manner and quantum of issue, facilitated the acquisition of a substantial interest in Emu by one or more Placees that the Emu directors could reasonably expect would be voted at the EGM and would likely be voted in support of the incumbent directors.
32. The timing of the placement had the potential to distort voting at the EGM inconsistently with the respective domains of the Board and shareholders.
33. The overall manner in which the EGM was conducted, including the two postponements, the placement on the day of the EGM and the lack of clarity and disclosure with regards to Emu's recount(s) of the proxies, did not give Emu shareholders or the market a sufficient basis for confidence as to the outcome of the EGM and the subsequent composition of the Emu Board, preventing or inhibiting the acquisition of control over Emu shares taking place in an informed market.

CONCLUSION

34. It appears to the Panel that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Emu or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Emu or
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 or
 - (c) in the further alternative, because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6 and 6C of the *Corporations Act 2001* (Cth).
35. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Emu.

Allan Bulman
Chief Executive
with authority of Stephanie Charles
President of the sitting Panel
Dated 27 June 2025

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