ASX Announcement

28 March 2025

Takeovers Panel releases reasons not to conduct proceedings following review

Global Lithium Resources Limited (**ASX: GL1**, "**Global Lithium**" or "the **Company**"), welcomes the Takeovers Panel's release of the Review Panel's reasons for its decision not to conduct proceedings in relation to a review application by the former GL1 Board, published 27 March 2025.

On 24 January 2025, the Initial Panel decision not to conduct proceedings was released in a public statement, following assessment of the original application from the former GL1 Board alleging an undisclosed association between certain shareholders in the Company. The reasons for the Review Panel's decision not to conduct proceedings have now been publicly released, following an application by the former GL1 Board for review of the Initial Panel's decision.

Ahead of the annual general meeting (**AGM**), former Executive Chairman Ron Mitchell resigned from the Board and former Finance Director Matthew Allen withdrew his nomination for election as a Director of GL1.

At the AGM, resolutions concerning the composition of the Board were considered and resolved by a vote of shareholders, including the reappointment of Dr Dianmin Chen as a Director and the election of Mr Liaoliang (Leon) Zhu and Dr Xiaoxuan (David) Sun as Directors of GL1.

Global Lithium Non-Executive Chairman Richard O'Shannassy said "I particularly welcome the Review Panel reasons for it deciding that there were no credible allegations of clear and serious unacceptable circumstances, in considering the merits of the former Board's review application," Mr O'Shannassy said.

"All current members of the GL1 Board are aligned in the Company's focus on unlocking further shareholder value through achieving key development milestones at the Manna Lithium Project."

Please see attached for the full Reasons for Decisions.

Approved for release by the Board of Global Lithium Resources Limited

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About Global Lithium

Global Lithium Resources Limited (ASX:GL1, Global Lithium) is a diversified West Australian lithium exploration and development company with multiple assets in key lithium branded jurisdictions with a primary focus on the 100% owned Manna Lithium Project in the Goldfields and the Marble Bar Lithium Project (MBLP) in the Pilbara region, Western Australia.

Global Lithium has defined a total Indicated and Inferred Mineral Resource of 69.6Mt @ 1.0% Li_2O at its Manna and MBLP Lithium projects, confirming Global Lithium as a significant global lithium player.

Directors

Richard O'Shannassy	Non-Executive Chair
Dr Dianmin Chen	Managing Director
Leon Zhu	Executive Director
Dr David Sun	Non-Executive Director

Global Lithium - Mineral Resources

Project (equity)	Category	Tonnes (MT)	Li_2O%	Ta_2O_5 ppm
Marble Bar	*Indicated*	3.8	0.97	53
	Inferred	14.2	1.01	50
	Total	**18.0**	**1.00**	**51**
Manna	*Indicated*	32.9	1.04	52
	Inferred	18.7	0.92	50
	Total	**51.6**	**1.00**	**52**
Combined Total		**69.6**	**1.00**	**52**

Competent Persons Statement:

Mineral Resources

Information on historical exploration results and Mineral Resources for the Manna Lithium Project presented in this announcement, together with JORC Table 1 information, is contained in an ASX announcement released on 12 June 2024.

Information on historical exploration results and Mineral Resources for the Marble Bar Lithium Project presented in this announcement is contained in an ASX announcement released on 15 December 2022.

The Company confirms that it is not aware of any new information or data that materially affects the information in the relevant market announcements, and that the form and context in which the Competent Persons findings are presented have not been materially modified from the original announcements.

Where the Company refers to Mineral Resources for the Manna Lithium Project (MLP) in this announcement (referencing previous releases made to the ASX), it confirms that it is not aware of any new information or data that materially affects the information included in that announcement and all material assumptions and technical parameters underpinning the Mineral Resource estimate in that announcement continue to apply and have not materially changed. The Company confirms that the form and context in which the Competent Persons findings are presented have not materially changed from the original announcement.

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Australian Government

Takeovers Panel

Reasons for Decision
Global Lithium Resources Limited 02R
[2025] ATP 4

Catchwords:

Decline to conduct proceedings – association – board spill – extend time for making application – out of time – collective action

Corporations Act 2001 (Cth), sections 249D, 602, 606, 657A, 657EA, 657C(3)(a), 657C(3)(b), 671B

Foreign Acquisitions and Takeovers Act 1975 (Cth)

Eastern Field Developments Limited v Takeovers Panel [2019] FCA 311, Queensland North Australia Pty Ltd v Takeovers Panel [2015] FCAFC 68, Palmer Leisure Coolum Pty Ltd v Takeovers Panel [2015] FCA 1498, Queensland North Australia Pty Ltd v Takeovers Panel [2014] FCA 591

Takeovers Panel Procedural Rules 2020, rule 6.2(d)

Guidance Note 2: Reviewing Decisions

ASIC Regulatory Guide 128: Collective action by investors

Global Lithium Resources Limited [2025] ATP 2, The Market Herald Limited [2023] ATP 7, Webcentral Group Limited 03 [2021] ATP 4, Mineral Commodities Limited [2019] ATP 16, Aguia Resources Limited [2019] ATP 13, Tribune Resources Ltd [2018] ATP 18, Molopo Energy Limited 01 & 02 [2017] ATP 10, The President's Club Limited 02 [2016] ATP 1, Orion Telecommunications Ltd [2006] ATP 23, Austral Coal Limited 03 [2005] ATP 14

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The review Panel, Jon Gidney, Karen Phin and John Sheahan KC (sitting President), declined to conduct proceedings on an application by Global Lithium Resources Limited (**GL1**) in relation to its affairs. The application concerned an alleged undisclosed association since at least February 2024 between certain GL1 shareholders holding between approximately 30–40%, in the context of an annual general meeting to be held on 13 February 2025. At the meeting, resolutions concerning the composition of the board were to be considered. The review Panel considered that the application was out of time under section 657C(3)(a)[1] and decided not to exercise its discretion to extend the time under section 657C(3)(b). Accordingly, the application was invalid, being made out of time, and the Panel declined to conduct proceedings.

2. In these reasons, the following definitions apply.

AGM	has the meaning given in paragraph 20

[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)

Alleged Associates	Canmax, Dr Dianmin Chen, Drock International Pty Ltd, Chen DM Pty Ltd, Sincerity, Mr Liaoliang (Leon) Zhu, Ms Yongfang Guo, Ms Chi Fan Siu, United and Seah
Canmax	Canmax Technology Co Ltd (Stock Code 300390 CN)
Confidential Annexures	has the meaning given in paragraph 105
GL1	Global Lithium Resources Limited
Investigatory Report	has the meaning given in paragraph 49(b)
Seah	CL Seah Holding Pty Ltd
Sincerity	Sincerity Development Pty Ltd
United	United Funds Pty Ltd

FACTS

3. The facts are set out in detail in the initial Panel's reasons for decision in *Global Lithium Resources Limited*.[2] Below is a summary of those facts and any other relevant facts at the time of GL1's review application.

4. GL1 (ASX code: GL1) is an ASX-listed lithium exploration company. At all relevant times during these proceedings, its directors were:

   (a) Mr Ronald Mitchell (executive chairman)

   (b) Dr Dianmin Chen (non-executive director) and

   (c) Mr Matthew Allen (non-executive director).

5. Dr Chen has, together with his controlled entities, Chen DM Pty Ltd and Drock International Pty Ltd, a relevant interest in approximately 4.91% of GL1's issued voting shares.

6. Sincerity is an Australian property development company, with a relevant interest in approximately 6.89% of GL1's issued voting shares. Its sole director and shareholder is Mr Liaoliang (Leon) Zhu.

7. Canmax is a Chinese entity involved in downstream battery materials production in China. It has a relevant interest in approximately 9.50% of GL1's issued voting shares).[3] Its chairman is Mr Zhen Hua Pei.

8. Ms Yongfang Guo has a relevant interest in approximately 6.26% of GL1's issued voting shares, which she holds directly.

9. Ms Chi Fan Siu has a relevant interest in approximately 1.52%[4] of GL1's issued voting shares, which she holds directly.

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[2] [2025] ATP 2

[3] HSBC Custody Nominees holds the shares on trust

[4] This includes 750,001 shares acquired by Ms Siu during these proceedings, on 24 January 2025

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10. United has a relevant interest in approximately 0.268% of GL1's issued voting shares. Its sole director is Mr Fan (Frank) Jiang, who is the husband of Ms Chi Fan Siu. Mr Jiang became a shareholder of GL1, acquiring 300,000 shares on 24 January 2025 (approximately 0.11% of the issued voting shares).
11. Seah has a relevant interest in approximately 0.73% of GL1's issued voting shares, which it holds directly.
12. Between 12 and 15 January 2024, Goldenstar Energy Pty Ltd sold down its interest in GL1 shares via off-market transactions and Sincerity, Ms Siu, Seah and Chen DM Pty Ltd purchased some of those shares.[5]
13. Between February and July 2024, Mr Zhu sent a considerable number of emails to GL1's board members and others detailing discussions he had had with various shareholders, including Mr Pei, holding up to 40% of GL1, concerning the future affairs of GL1.
14. On 10 May 2024, Bright Element Pty Ltd sold its interest in GL1. Dr Chen and Sincerity purchased some of those shares.[6]
15. On 18 June 2024, Sincerity acquired a further 2,783,984 GL1 shares.
16. In July and August 2024, Mr Zhu sent further messages and held meetings with Mr Mitchell and other representatives of GL1 regarding the affairs of GL1.
17. On 20 August 2024, GL1 received a section 203D[7] notice from Sincerity giving notice of its intention to move a resolution that Ms Hayley Lawrence and Mr Gregory Lilleyman be removed as directors of GL1.
18. On 21 August 2024, GL1 received a section 249D notice[8] from Sincerity proposing that:
    (a) Ms Lawrance be removed as a director of GL1
    (b) Mr Lilleyman be removed as a director of GL1
    (c) Mr Zhu be appointed as a director of GL1 and
    (d) the number of directors of GL1 be a maximum of 3.
19. At the time the section 249D notice was received, GL1's board comprised:
    (a) Mr Mitchell (chairman)
    (b) Dr Chen
    (c) Ms Lawrance and

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[5] See *Global Lithium Resources Limited* [2025] ATP 2 at [19] for further details on these acquisitions
[6] See *Global Lithium Resources Limited* [2025] ATP 2 at [24] for further details on these acquisitions
[7] 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)
[8] Sincerity had previously submitted a purported section 249D notice on 15 August 2024, which GL1 subsequently advised Sincerity was ineffective under the *Corporations Act 2001* (Cth)

(d) Mr Lilleyman.

20. On 10 September 2024, GL1 released an ASX announcement titled '*GL1 Corporate Update*' which stated (among other things) that Ms Lawrance and Mr Lilleyman had advised of their intention to resign at completion of GL1's annual general meeting (**AGM**) and that Mr Allen had been appointed as Executive Director Finance.

21. On 11 September 2024, GL1 applied to the Supreme Court of Western Australia for the section 249D resolutions to be held over to its AGM. The Court ordered the section 249D resolutions be dealt with at the AGM on or before 20 November 2024.

22. On 14 October 2024, GL1 made a confidential report to the Department of Treasury regarding potential contraventions of the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

23. On 18 October 2024, GL1 issued a notice of AGM, which included a recommendation from the GL1 directors (other than Dr Chen) that shareholders vote against the appointment of Mr Zhu as director of GL1.

24. On 22 October 2024, GL1 announced that it had received a request from a shareholder to nominate Dr Xiaoxuan (David) Sun for election to the GL1 board.

25. On 5 November 2024, the legal representatives of GL1 wrote to Sincerity's legal representative seeking its consent to orders "*which would have the effect of permitting GL1 to delay holding the AGM (including the s249D resolutions) until the end of March 2025)*".

26. On 13 and 14 November 2024, the legal representative of Sincerity responded to the letter with a proposal that Mr Zhu "*be appointed to a casual vacancy upon resignation of Mr Lilleyman and Ms Lawrance in the same manner as Mr Matthew Allen has been appointed*" as the *quid pro quo* for the adjournment of the AGM sought by GL1.

27. On 19 November 2024, GL1 released an ASX announcement stating (among other things) that the Supreme Court of Western Australia had deferred GL1's AGM to a date on or before 14 February 2025.

28. On 9 January 2025, GL1 sought a declaration of unacceptable circumstances alleging in effect that there was a continuing undisclosed association between the Alleged Associates since at least February 2024 to attempt to obtain board control of GL1 (by securing a majority of board positions), obtain operational control for management of the affairs of GL1 and cause GL1 to act uncommercially. GL1 also alleged that:

    (a) by the formation of a relevant agreement, each of the Alleged Associates had contravened section 606(1) and

    (b) each of the Alleged Associates had contravened section 671B by failing to give substantial holder notices.

29. On 13 January 2025, GL1 issued a Revised Notice of AGM and Proxy Form in relation to a rescheduled AGM to be held at 4.00pm (WST) on 13 February 2025. The notice included a statement that the directors (other than Dr Chen) recommended shareholders vote against the re-election of Dr Chen, and maintained their recommendation to vote against the appointment of Mr Zhu.

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30. The initial Panel declined to conduct proceedings on the basis that (among other things):

    (a) the application was not timely

    (b) an extension of time under section 657C(3)(b) was needed in order to make the application because it was not brought within two months of the date the allegedly unacceptable circumstances occurred (as required by section 657C(3)(a)) and that there was no reasonable prospect that the initial Panel would exercise its discretion to extend time and

    (c) it would not be appropriate in the circumstances of the matter to seek to resolve factual questions and thereafter determine whether or not to extend time under section 657C(3)(b).

31. On 24 January 2025, GL1's company secretary sent an email to Mr Mitchell stating "*I had a call from Dianmin this morning (from China) asking me to convey a message to you and noting the Takeover Panel announcement this morning. He asked that you be sensible and consider resigning now before the AGM so no more damage to the company. He said you will not win.*"

APPLICATION

32. On 27 January 2025, GL1 requested the Acting President's consent to apply for a review of the decision by the initial Panel in *Global Lithium Resources Limited*[9] pursuant to section 657EA. GL1 submitted (among other things) that:

    (a) the unacceptable circumstances were continuing and that the time limit in section 657C(3)(a) did not apply and

    (b) if this position was not accepted, a review Panel should be satisfied that there was a reasonable prospect that it would allow a longer period under section 657C(3)(b) "*as part of the ultimate determination of the Application.*"

33. GL1 sought the same final orders it sought in the initial application. GL1 also sought interim orders to the effect that the time fixed for the holding of its AGM be extended up to and including 28 February 2025.

34. In accordance with Guidance Note 2: Reviewing Decisions, the President's approach to consenting to a review is guided by the following considerations:

    (a) "*that it is a policy underpinning s657EA(2) that there should be a prompt conclusion to Panel proceedings*

    (b) *whether there was any potential error in the sitting Panel's decision and*

    (c) *whether there is any other basis for granting consent, for example, if there is new evidence, the importance of the dispute, whether there would be material prejudice to any party by consenting or by withholding consent, and the merits of the sitting Panel's decision.*"

[9] [2025] ATP 2

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35. The Acting President, while not on first view convinced that there was new evidence or a potential error from the sitting Panel and accordingly having concerns that the review application did not meet the above criteria, considered that it was not inconceivable that a review Panel may come to a different view on the question of conducting proceedings and granted her consent to the review of the decision.

DISCUSSION

36. We have considered all the material, including the material before the initial Panel in *Global Lithium Resources Limited*,[10] but address specifically only those we consider necessary to explain our reasoning.

37. The powers of a review Panel are set out in section 657EA. Our role is to conduct a *de novo* review.[11]

38. We received preliminary submissions from Dr Chen and from Sincerity and Mr Zhu. We also received the initial Panel's reasons and sought submissions from the parties on them.[12]

Out of time to make an application

39. Section 657C(3) provides that:

An application for a declaration under section 657A can be made only within:

(a) *2 months after the circumstances have occurred; or*

(b) *a longer period determined by the Takeovers Panel.*

40. In its initial application, GL1 submitted that its application was within time under section 657C(3)(a) given "*the circumstances which are unacceptable involve a continuing association for the intended change of control of the board of GL1 through the AGM set for no later than 14 February 2025 and future implementation for a plan in the management of its affairs, upon the obtaining of board control*".

41. The initial Panel found that the application was not timely and that an extension of time under section 657C(3)(b) was needed to make the application, which the initial Panel was not minded to grant.[13]

42. In its review application, GL1 submitted that the time limit in section 657C(3)(a) had not yet been reached on the following bases:

(a) the undisclosed association was manifested in critical events in the two months preceding GL1's application and key evidence was obtained in late December 2024 to early January 2025, with the effect on control of GL1 likely to be crystalised at the upcoming AGM and

(b) while GL1 relied on earlier statements of the Alleged Associates' intentions, these formed part of a "*composite or complex of circumstances*" that were

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[10] [2025] ATP 2

[11] *Eastern Field Developments Limited v Takeovers Panel* [2019] FCA 311 at [181]

[12] We did not receive the Acting President's reasons for granting consent under s657EA(2)

[13] *Global Lithium Resources Limited* [2025] ATP 2 at [96]-[111]

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continuing so that "*time [was] still running*" for the purpose of section 657C(3)(a) and the contraventions of section 606(1) and section 671B were current.

43. Dr Chen submitted that "*[c]onstruing an undisclosed association as a continuing circumstance renders the time limit in s 657B(3)(a) nugatory: it could be avoided in every association case and an applicant could sit on their hands in the knowledge that they could delay bringing matters to the Panel almost indefinitely*".

44. For us to come to a view as to whether GL1's application was within time under section 657C(3)(a), we considered the events that occurred within the two months prior to the application and considered:

(a) whether these events were capable of being declared unacceptable circumstances under section 657A and therefore whether the application was within time under section 657C(3)(a) *stricto sensu*

(b) whether these events, together with the earlier events relied upon by the applicant in support of its allegation of association since at least February 2024, formed part of a composite of circumstances which were ongoing so that section 657C(3)(a) was not enlivened and the application was within time or

(c) whether these events, on the one hand, constituted unacceptable circumstances that were new and distinct from what had gone before, or, on the other hand, were circumstances which are properly characterized as flowing from earlier circumstances, or a continuation of them, or additional evidence of unacceptable circumstances constituted or disclosed by earlier events, so that the application was out of time under section 657C(3)(a).

Events in the two months prior to the application

45. GL1 submitted that the following critical events occurred in the two months prior to the application:

(a) the Alleged Associates' ongoing campaign for majority board control, including Sincerity writing to GL1's solicitors requiring the resignations of independent directors Ms Lawrance and Mr Lilleyman on 13 and 14 November 2024

(b) the Alleged Associates engaging in "*agreed common voting*" for the 13 February 2025 AGM

(c) Sincerity opposing GL1's AGM extension of time application at the 18 November 2024 hearing in the Supreme Court and

(d) the continuing intentions of Mr Zhu and Dr Chen to be directors of GL1.

46. To the extent that GL1 was concerned about a potential association established by a common purpose in relation to its board, we consider that there were earlier events that were significantly more cogent in supporting such allegations. We consider the following, extracted from GL1's initial application, to be particularly relevant:

(a) "*In March and April 2024, Mr Zhu wrote, repeatedly, to the directors of GL1 on each occasion purporting to act for 30-40% of shareholders or large shareholders to: a) change the size of the GL1 board (i.e., number of directors) within a specified time frame*

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and have Ms Lawrance and Mr Lilleyman removed as directors of GL1" (footnote omitted)

(b) *"In July 2024, Mr Zhu (Sincerity) again speaking on behalf of "at least over 30% of shareholders (and specifically naming Mr Pei (Canmax), Ms Guo, Mr Jiang (and his wife, Ms Chi Fan Siu and United Funds) "with Perth and Melbourne shareholders"), put "our shareholder's proposal" to have Mr Jones resign, Dr Chen as Executive Chairman and reduce DFS costs. Mr Zhu again proposed that Mr Lilleyman and Ms Lawrance retire early and threatened "or we have to do 249D to replace them""* (footnote omitted)

(c) *"In August 2024, at a meeting of Mr Zhu, Sincerity's solicitor, Mr Mitchell and GL1's solicitor, each of Mr Zhu and Sincerity's solicitor indicated they spoke for or represented up to 40% of shareholders of GL1. Mr Zhu (Sincerity) provided a purported s 249D notice at the meeting and in a subsequent email that day intimated he had 40% shareholder support, threatening to file it if GL1 does not accede to his request."* (footnote omitted)

(d) On 23 August 2024, GL1 announced that it had received a revised section 249D notice from Sincerity seeking the removal of directors Mr Lilleyman and Ms Lawrance and the appointment of Mr Zhu to the board and

(e) *"From September 2024 to present, Sincerity has pressed that its resolutions for the change of the board composition proceed promptly to consideration by shareholders of GL1"* (footnote omitted).

47. We consider that Mr Zhu's actions in the two months preceding the application[14] flowed from these earlier events, including the section 249D notice, and were a continuation of them, and hence should not be considered new circumstances.

48. We also consider that Dr Chen, founding shareholder and a director of GL1, continuing to intend to be a director of GL1 and not withdrawing his candidature for directorship for the AGM does not have strong probative value.

49. GL1 submitted that critical evidence was obtained in the two months prior to its application, including in relation to:

(a) voting, as the Alleged Associates lodged their proxies in November 2024 for the AGM and GL1 submitted that, upon review of the proxies:

(i) (A) Dr Chen and his controlled entities voted from the same IP address as Seah and (B) Ms Guo voted from the same IP address as a number of other shareholders and

(ii) the Alleged Associates shared a common voting pattern and

(b) structural links, through GL1 obtaining a draft report dated 20 December 2024 from a professional services firm to investigate any potential connections

[14] Including proposing as *quid pro quo* for the adjournment of the AGM sought by GL1 that Mr Lilleyman and Ms Lawrance resign and that he be appointed as a casual director until the AGM, opposing the adjournment and maintaining his candidature to the GL1 board.

between the Alleged Associates, their sources of funding and any connections to "*politically exposed people*" (**Investigatory Report**).

50. In relation to the IP addresses, given the size of the holdings affected, the limited number of Alleged Associates concerned and the absence of underlying voting agreements, we do not consider that this evidence constituted circumstances capable of being declared unacceptable. As to the Investigatory Report, it was based on historical connections between the Alleged Associates and did not bring any new evidence.

51. We do consider that the voting intentions and the patterns reflected in the proxies lodged in advance of the AGM were relevant circumstances. However, shareholders voting in the same manner is usually not sufficient evidence to demonstrate an association unless there is an understanding or an agreement entered into regarding the exercise of voting rights.[15] Here there is no material before us to suggest, and the applicant does not allege, that an understanding or agreement among the Alleged Associates about the exercise of their voting rights at the AGM came into existence in the two months preceding the application.

52. For these reasons, we are not satisfied that the events that occurred since November 2024, whether taken together or in isolation, are capable of being declared unacceptable circumstances under section 657A and instead consider that, for the purpose of section 657C(3)(a), the relevant circumstances in GL1's application occurred no later than 21 August 2024, when GL1 received from Sincerity the section 249D notice.

Ongoing circumstances or effect of earlier circumstances?

53. We are not satisfied that, for the purpose of section 657C(3)(a), the events that occurred in the two months preceding the application should be regarded as being part of a composite of circumstances which started earlier in 2024 and are ongoing.

54. First, we agree with the initial Panel that the date on which the alleged association arose is, and should be, identifiable.[16] As the Full Court of the Federal Court of Australia said in *Queensland North Australia Pty Ltd v Takeovers Panel*, "*[i]n order for the time limitations under ss 657B and 657C to operate effectively the relevant circumstances must be capable of being identified as having arisen at a particular time.*"[17]

55. Secondly, we consider that adopting the view that unacceptable circumstances may be ongoing in which case section 657C(3)(a) does not apply does not meet the commercial imperatives, including timeliness, which underpin our jurisdiction. The Panel has to consider whether the circumstances are unacceptable in light of the principles referred to in section 602, which point to the timely disposition of applications. Indeed, "*it cannot be thought that the Parliament intended the expressions "after the circumstances occur" and "after the circumstances have occurred" to be capable of being reset on a daily basis with each new day being the starting point for the calculation of*

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[15] *Orion Telecommunications Ltd* [2006] ATP 23 at [111]
[16] *Global Lithium Resources Limited* [2025] ATP 2 at [99]
[17] *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68 at [64]

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the time limits imposed. Such a construction would strain against the policy objectives and, far from being timely, very long periods of time could elapse between the first "occurring" of the circumstances and their continuing occurrence, without offending the time limits."[18]

56. In our view the circumstances are not rendered ongoing by treating ongoing effects as part of the circumstances[19] and GL1's application dated 9 January 2025 was out of time under section 657C(3)(a).

Decision not to extend time

57. Under section 657C(3)(b), the Panel is given a discretion to extend the 2-month limit to make an application.

58. In *Webcentral Group Limited 03*[20], the Panel set out the following factors as relevant in considering whether to do so:

    (a) *the discretion to extend time should not be exercised lightly*[21]

    (b) *whether the application made credible allegations of clear and serious unacceptable circumstances, the effects of which are ongoing*[22]

    (c) *whether it would be undesirable for a matter to go unheard, because it was lodged outside the two month time limit, if essential matters supporting it first came to light during the two months preceding the application*[23] *and*

    (d) *whether there is an adequate explanation for any delay, and whether parties to the application or third parties will be prejudiced by the delay.*[24]

59. The Panel also takes into account the public interest in deciding whether to extend time.[25]

60. Having regard to all relevant discretionary considerations, including those mentioned in *Webcentral Group Limited 03*[26], we determined not to extend time for GL1's application for the reasons below.

Decision not exercised lightly

61. We ensured that parties had the opportunity to make submissions on whether we should extend time under section 657C(3)(b)[27]. We consider that this was satisfied on the following occasions:

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[18] *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68 at [71]
[19] *Palmer Leisure Coolum Pty Ltd v Takeovers Panel* [2015] FCA 1498 at [75]
[20] [2021] ATP 4 at [86]
[21] *Austral Coal Limited 03* [2005] ATP 14 at [18]
[22] Ibid at [19] and *The President's Club Limited 02* [2016] ATP 1 at [143]
[23] *Molopo Energy Limited 01 & 02* [2017] ATP 10 at [248]
[24] Ibid at [249]
[25] See *The President's Club Limited 02* [2016] ATP 1 at [145]-[158]
[26] [2021] ATP 4 at [86]
[27] *Queensland North Australia Pty Ltd v Takeovers Panel* [2014] FCA 591 and *The President's Club Limited 02* [2016] ATP 1 at [109]

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(a) when making submissions in response to the initial Panel's preliminary questions[28] and

(b) when making submissions on the initial Panel's reasons for its decision to decline to conduct proceedings.

62. We reviewed the submissions from the applicants and the other parties and weighed the factors before determining not to extend time for GL1's application. We did not do so lightly.

63. The time limit in section 657C(3)(a) was set by the legislature to provide certainty to market participants in the context of takeovers that actions could not be challenged indefinitely.[29] The Panel is a prompt dispute resolution body that is not intended to deal with historical matters that can be addressed by a court. We recognise that the application was made in the context of an upcoming (albeit postponed) AGM to consider section 249D resolutions. However, for the reasons discussed below, we consider that GL1's delay in bringing the application weighed against granting an extension.

Credible allegations of clear and serious unacceptable circumstances

64. GL1 submitted that each of the Alleged Associates had acquired a relevant interest in "*each other's power or control of the exercise of rights to vote securities for the board change resolutions*" and that each had more than 20% of the voting power in breach of section 606 and section 671B.

65. In *Aguia Resources Limited*[30], the Panel stated that "*[e]ven if the aggregate voting power of alleged associates is more than 20%, there is no contravention of s606 unless a person has acquired a relevant interest in shares through a transaction in relation to securities entered into by or on behalf of that person. In the context of a board spill, in the absence of any acquisitions of shares by alleged associates, the Panel will need to find that the alleged associates have acquired a relevant interest in each other's shares by entering into a relevant agreement to each vote their shares in favour of the resolutions at the requisitioned meeting*."

66. We also considered ASIC's guidance[31] that the takeover prohibition does not prohibit collective action occurring when, despite the aggregate voting power of the investors being more than 20%, no "transaction" in relation to securities has been entered into and no interest in securities has been acquired.

67. Here, there was admittedly some evidence to point to the existence of relevant agreements among some at least of the Alleged Associates, but for reasons we give below it was not compelling.

68. We also looked for any recent acquisitions of GL1 shares by the Alleged Associates to assess whether there was a potential for a section 606 breach. We turned our minds to the selldowns by Goldenstar Energy Pty Ltd and Bright Element Pty Ltd in

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[28] *Global Lithium Resources Limited* [2025] ATP 2 at [63]
[29] *Molopo Energy Limited 01 & 02* [2017] ATP 10 at [247]
[30] [2019] ATP 13 at [24]
[31] ASIC Regulatory Guide 128: Collective action by investors

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January 2024 and May 2024 respectively, as well as an acquisition of GL1 shares by Sincerity in June 2024. We did not consider the recent share acquisitions by United[32] and Ms Siu[33] on 24 January 2025 to be relevant given their size.

69. Dr Chen submitted that the acquisitions of shares from Goldenstar Energy Pty Ltd and Bright Element Pty Ltd were facilitated by a stockbroker and that:

    (a) "*the Goldenstar transaction was arranged only after Mr Mitchell was unable to find off-market purchasers for the shares*" and

    (b) "*in both instances, Dr Chen's participation was approved in advance: by the managing director and company secretary in respect of the Goldenstar transaction, and the Board chair in respect of the Bright Element transaction.*"

70. While these acquisitions evidence some accumulation of shares by some of the Alleged Associates, they were made before the majority of circumstances we have identified as potentially relevant to a finding of association (see paragraph 46). If any association involved less than all of the Alleged Associates, it is possible that the combined voting power may not exceed 20%. Further, Dr Chen's submission weighs against an inference that these acquisitions were coordinated by one or more of the Alleged Associates. On these bases, we are of the preliminary view that we were unlikely to find a contravention of section 606(1).

71. To the extent that we were to find an association between one or more of the Alleged Associates, there may be a disclosure obligation if the combined voting power of those Alleged Associates is over 5%. We accept that the question of compliance with the substantial holding provisions is important to ensure an efficient, competitive and informed market and non-disclosure may give rise to unacceptable circumstances under s657A(2)(c).[34]

72. However, on the materials provided, we are not satisfied that this is a compelling case that goes beyond collective action. Many of the indicators of association submitted in GL1's application are equivocal. We note, for example, the 'back and forth' nature of exchanges between Mr Mitchell, Dr Chen and Mr Zhu on 6 July 2024 which is inconsistent with the idea that Dr Chen and Mr Zhu are co-conspirators in relation to the affairs of GL1, as per GL1's submission: "*Mr Mitchell accepts that he did speak to Mr Zhu on 5 July regarding Mr Jones. However, that was in response to a request from Dr Chen asking Mr Mitchell to contact Mr Zhu… Mr Mitchell said words to the effect that the board was concerned that Mr Jones might have a conflict of interest, and he sought Mr Zhu's view on that issue as requested by Dr Chen*".

73. Considering the merits of the application on its face, we do not consider there to be credible allegations of clear and serious unacceptable circumstances. This weighs in

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[32] United acquired 300,000 GL1 shares on 24 January 2025, representing approximately 0.11% of GL1's issued voting shares

[33] Ms Siu acquired 750,001 GL shares on 24 January 2025, representing approximately 0.29% of GL1's issued voting shares

[34] *Tribune Resources Ltd* [2018] ATP 18 at [65]-[68]

favour of us exercising our discretion not to extend the time for GL1 to make its application under section 657C(3)(b).

Essential matters coming to light preceding the application

74. GL1 submitted that "*[t]aken with the fact that the AGM is yet to be held, the continuing circumstances in November 2024 (including around voting patterns) and [Investigatory Report] in December 2024 as to comprehensive associations, which provided significant and cogent new evidence to GL1 previously unavailable to it, even if GL1 were not within section 657C(3)(a), then these events still justify the Panel allowing a longer period under section 657C(3)(b) to deal with live and current control issues*". GL1 further submitted that "*it was critically the events in November and December 2024 summarised above that were the catalyst for GL1 having sufficient material to make the Application*".

75. The Panel has previously extended the time to make an application where there are new circumstances, or essential matters coming to light, in the two months preceding the application, that put a different complexion on the information previously available and which justify an extension of time.[35]

76. Here, we consider that:

    (a) the upcoming AGM and the voting pattern apparent from the proxies lodged constitute the crystallisation of any historical relationship rather than new matters coming to light

    (b) other events that occurred in November and December 2024 are not circumstances capable of being declared unacceptable circumstances as discussed at paragraphs 45 to 52 above

    (c) the Investigatory Report submitted by GL1 did not bring to light any essential matter supporting the application and identified mostly publicly available information, i.e. matters that could be ascertained through ASIC company extracts.

77. As to the issue of the common IP addresses[36], this shows that:

    (a) Dr Chen and his controlled entities voted from the same IP address as another GL1 shareholder holding a 0.73% relevant interest in GL1 (Seah) and

    (b) Ms Guo voted from the same IP address as 8 other shareholders, who are not the Alleged Associates.

78. We do not consider this to be a strong indicator of association.

79. Therefore, we are not satisfied that essential matters supporting GL1's application first came to light during the two months preceding the application so that it would be undesirable for this matter to go unheard.

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[35] See, for example, *The Market Herald Limited* [2023] ATP 7 at [272]
[36] See paragraph [58] above

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Adequate explanation for any delay

80. GL1 submitted that "*[t]he Panel has made it abundantly clear to market participants that a compelling body of evidence needs to be presented on an application to the Panel to show association and that an applicant cannot merely make assertions which it leaves to the Panel to investigate. In cases where associations are pervasive or covert, as GL1 considers they are here, this is not a casual or overnight exercise. It requires care, preparation and extensive research, including by ongoing re-visiting of earlier material as new developments arise to assess an overall body of evidence.*" GL1 submitted that, given the pervasive or covert nature of undisclosed association, an applicant should be permitted "*a reasonable period of time to prudently investigate or prepare, even if over a period of 2 to 4 months*".

81. Dr Chen submitted that GL1 had been relying on communications, including emails, from Mr Zhu and therefore "*there is no basis for suggesting that the alleged associates were acting in a covert way, or justifying the applicant's delay on that basis. The applicant cannot have it both ways: it cannot rely on communications to the applicant's directors as evidence of an association, while simultaneously submitting that the association was covert.*"

82. We agree that, in certain circumstances, gathering the evidence necessary to meet the association hurdle required in Panel applications while meeting the time constraints imposed by section 657C(3)(a) can be a balancing act.

83. Here, there were numerous conversations and meetings over the last 12 months between Alleged Associates and GL1 directors that go against a finding of covert association. Rather than attempting to conceal his voting power,[37] Mr Zhu was very direct in stating, on numerous occasions, that he was speaking on behalf of 30 to 40% of GL1 shareholders.

84. We are not satisfied that the relationship between the Alleged Associates was covert and that it would justify GL1's delay, which, in the context of the upcoming AGM, made us reluctant to interfere.[38]

85. The initial Panel stated that "*Mr Mitchell referred to GL1's concerns regarding a potential association between Mr Zhu and others, including Dr Chen, in his affidavit filed with the Supreme Court of Western Australia on 11 September 2024. Even accepting there was insufficient information that might meet the hurdle test for a Panel application at that time, a significant amount of time has passed since then, including the making of an application or complaint to the Department of Treasury on 14 October 2024 as to potential contraventions of the FATA. If the later date of the Treasury application is taken, almost 3 months passed before the Panel application was made.*"[39]

86. The applicant submitted that "*it is not correct to say that because GL1 could report a matter for investigation to one regulatory body under one statute that it had a fully formed case to bring before a separate court or tribunal under a different statute*".

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[37] As was the case in *Tribune Resources Ltd* [2018] ATP 18 at [83], where the Panel extended the time to make the application

[38] *Aguia Resources Limited* [2019] ATP 13 at [24]

[39] *Global Lithium Resources Limited* [2025] ATP 2 at [105]

87. Mr Zhu and Sincerity submitted that GL1's delay appeared to be strategic and that "*the reason for the delay in lodging the application stems from a deliberate choice by the applicants to refer the matter to Treasury rather than to the Panel.*"

88. Dr Chen submitted that GL1's application was "*a fallback in case that investigation does not produce the desired result.*"

89. We do not consider it is appropriate to draw any inferences as to GL1's motivations from the above. However, we agree with the initial Panel and consider it is clear that GL1 did delay in making its application.

Prejudice caused by delay

90. Dr Chen submitted that the delay had compressed the time available to respond to allegations.

91. In response, GL1 submitted in its review application that "*from the Application on 9 January to 13 February 2025 there are 4.5 weeks, being an ordinary timeframe in which the Panel conducts proceedings.*"

92. Under section 657B, unless it applies to the Court for an extension of time, the Panel can only make a declaration of unacceptable circumstances within:

    (a) 3 months after the circumstances occur or

    (b) 1 month after the application was made.

93. We agree with Dr Chen's submission and consider that GL1's delay in making the application compressed the time available not only for the parties but also for the Panel. Given we consider that the relevant circumstances in GL1's application occurred no later than 21 August 2024, section 657B(a) is not applicable and we only have a month to make a declaration of unacceptable circumstances on an application with over 2,300 pages of annexures without seeking a court extension.

94. Mr Zhu and Sincerity submitted that "*the true prejudice to shareholders is the continued delay of the AGM, which has been driven by the applicants themselves*".

95. We did also consider GL1's delay in bringing its application in the context of the upcoming AGM. On the materials provided, we were reluctant to intervene on an application to affect voting at a company meeting with less than a month's notice.[40]

Availability of remedies

96. Dr Chen submitted that "*[t]he Supreme Court of Western Australia is already seized of the matter and can be approached on urgent timeframes, if necessary, for the interim relief the applicant seeks. It is entirely inappropriate for the applicant to seek to avoid returning to the Supreme Court (which, when delaying the AGM, granted a shorter extension than sought by the applicant) for a further extension, by seeking the same relief from the Review Panel. It amounts to forum shopping and a wasteful duplication of actions.*"

97. We consider that it would have been more appropriate for GL1 to seek an interim order that the AGM be deferred, given the Supreme Court of Western Australia had

[40] See also *Mineral Commodities Limited* [2019] ATP 16 at [26]

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already been seized of the issue, and had ordered that the AGM be deferred, not until the end of March 2025 as initially requested by GL1, but until 13 February 2025.

98. In our view, there were other remedies available to GL1, including interlocutory relief in the Supreme Court of Western Australia, and this informed our decision not to exercise our discretion to extend time under section 657C(3)(b).

Public interest

99. We also considered whether it is in the public interest for the Panel to consider the merits of GL1's application so long after the relevant circumstances occurred, in light of any prejudice suffered, the strength of the evidence and the timing of the AGM.

100. As previously stated, we are inclined to the view that the evidence points to collective action rather than combining for taking of control and that we are unlikely to find a contravention of section 606. As a prompt decision making body which aims to keep time limits as short as is reasonable and consistent with procedural fairness,[41] we are not satisfied that here public interest requires us to extend the time for GL1's application. We also consider that, to the extent we are able to come to a view as to whether we should extend the time under section 657C(3)(b) (see paragraphs 101to 104 below), there is no reason not to decide that question at the beginning and indeed we should, to save time and expenses for everyone.

Timing of our decision

101. GL1 submitted that we should come to a view as to whether to exercise our discretion to extend time under section 657C(3)(b) following our determination of whether unacceptable circumstances existed. In other words, GL1 submitted that we should conduct proceedings prior to deciding whether to allow for an extension of time.

102. In *Queensland North Australia Pty Ltd v Takeovers Panel*[42], the Full Court stated that "*…limitation periods often cannot be determined prior to findings on the facts underlying an asserted cause of action, so that limitation questions rarely justify summary determination of proceedings… The asserted facts in this case are that certain circumstances were said to exist and were such that the Panel should declare them to be unacceptable circumstances. Before the discretion to extend time may be exercised under s 657C(3) those circumstances require to be proved. There may be a factual contest. There is no difficulty, in that situation, for the Panel first resolving the factual questions and thereafter determining whether or not to extend time under s 657C(3). The legislative scheme here does not suggest a different approach.*"

103. In *AIMS Property Securities Fund 01 & 02* [2021] ATP 15, the Panel considered a request by a party to determine the question of extension of time as a threshold issue and sought submissions from the parties on that issue. In response, ASIC made the following submission (at [27]) that the Panel agreed with (referring to *Queensland North Australia Pty Ltd v Takeovers Panel*):

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[41] *Takeovers Panel Procedural Rules 2020,* rule 6.2(d)
[42] [2015] FCAFC 68 at [75]

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> *The statement by the Full Federal Court makes expressly clear that, under the legislative scheme, there is "no difficulty" in the Panel resolving the Extension Question after resolving factual questions. It is therefore open to the Panel to determine the Extension Question before, after or simultaneously as it makes findings of facts. These questions are necessarily interrelated, and nothing fetters the order in which the Panel determines the Extension Question.*

104. In circumstances where a Panel needs to investigate thoroughly the facts in order to determine whether the application was or was not timely, we agree that the timeliness question can, and should, be dealt with properly once it has reached a view on whether unacceptable circumstances exist. However, here the date the requisition notice was received represents the latest date that the alleged association may have been formed and we can rely on that date to come to a view on the timeliness of the application. Further investigation may reveal that the association was formed earlier than that date, but this would not impact our conclusion that the application was made out of time.

Request for confidentiality directions

105. In its initial application, GL1 marked a number of the annexures to the application 'confidential' (**Confidential Annexures**). Fully redacted versions were provided to the parties but an unredacted version was provided to the Panel executive. GL1 requested that the Confidential Annexures be provided solely to legal representatives of the interested persons, subject to those recipients providing a confidentiality undertaking and submitted that doing so mitigates any procedural fairness or prejudice that may otherwise result from the requested disclosure restrictions.

106. We share the initial Panel's concerns with regards to this request, which we consider unsatisfactory.

107. We would require at a minimum that a party seeking confidential restrictions, particularly when it is the applicant doing so, justify the restrictions it is willing to impose by reference to the genuine commercial sensitivity of the information in question and offer that the restrictions be kept to a minimum. Given the procedural fairness requirements imposed on our proceedings, we consider that these requests should be limited to exceptional circumstances.

DECISION

108. For the reasons above, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

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Orders

109. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

John Sheahan KC
President of the sitting Panel
Decision dated 11 February 2025
Reasons given to parties 24 March 2025
Reasons published 27 March 2025

Postscript

110. On 13 February 2025, GL1 announced that:

    (a) "*Mr Ron Mitchell has tendered his notice of resignation as Executive Chair of the Company, effective from the close of the Company's annual general meeting of shareholders scheduled for 13 February 2025 at 4pm (AGM)*" and

    (b) "*Mr Matthew Allen has withdrawn his nomination for election as a Director of the Company, effective immediately, such that his appointment as a Director filling a casual vacancy will automatically cease at the close of the AGM.*"

111. On 14 February 2025, GL1 announced the results of its AGM, including that Dr Chen was re-elected as director of GL1 and Mr Zhu and Dr Sun were both elected to GL1's board.

112. On 18 February 2025, GL1 announced that it had appointed Mr Richard O'Shannassy to the board of GL1 "*as an independent, Non-Executive Director and Chairman*".

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Advisers

Party	Advisers
Global Lithium Resources Limited	Peloton Legal and Thomson Geer
Dr Dianmin Chen, Drock International Pty Ltd and Chen DM Pty Ltd	HFW Australia
Sincerity Development Pty Ltd and Mr Liaoliang Zhu	Cornerstone Legal
Canmax Technologies Co., Ltd	
Ms Chi Fan Siu	
United Funds Pty Ltd	

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