



Warning on challenges to panel

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Regulation

NEW legislation might be needed to protect the role of the Takeovers Panel if the body's rulings continue to be challenged in the courts, a corporate law expert warned yesterday.

Melbourne University professor Ian Ramsay, who also is one of the panel's 47 sitting members, said that while the panel had proven a success in keeping takeover disputes out of court and forcing better disclosure, there were concerns that it could be compromised by court challenges.

"There is some uncertainty just at the moment about the susceptibility of the panel to ongoing judicial review ... or the prospect of parties too easily seeking judicial intervention," Professor Ramsay said after releasing a study on the panel's performance since it was reconstituted with greater powers in 2000.

"It is a live issue at the moment and it isn't yet resolved."

The panel is a peer review body of legal and investment banking professionals empowered to rule on takeover disputes. It is designed to prevent takeover players using the courts to delay or defeat takeover bids.

Last year, the panel survived a

constitutional challenge in the Federal Court from Swiss commodity trading giant Glencore. But Glencore succeeded in having the court overrule the panel's orders against it regarding the Swiss company's use of swaps during a takeover.

Were the Glencore move to become a trend the panel might have to consider lobbying the government to make changes, Professor Ramsay said.

But Takeovers Panel director Nigel Morris said it was not yet an issue and it was appropriate that the panel's decisions, where warranted, be subject to some judicial review. "We are concerned but not alarmed," he said. "It is good for the panel to know that its decisions are open to review."

He noted that recent high-profile takeover battles between Alinta and AGL, Toll and Patrick and Sydney Gas and Queensland Gas, had not resulted in court challenges against the panel.

In a report assessing the effectiveness of the Takeovers Panel, Melbourne University's Centre of Corporate Law and Securities Regulation found that the panel had proven a "quick and efficient adjudicator of takeover disputes with few of its decisions being the subject of applications for re-

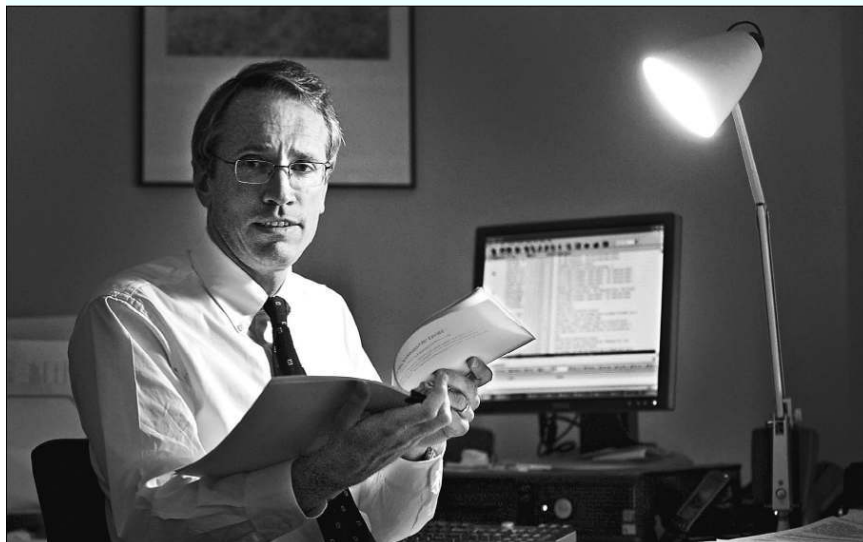
view".

In its first five years of operation to the end of 2005, the panel examined 153 matters and on 21 occasions declared "unacceptable circumstances", forcing companies to make changes. On 32 other occasions, it secured undertakings from companies or brokered a settlement of disputes.

That compared well with the sorry performance of its earlier form through the 1990s where it made only four decisions as it became mired in repeated court challenges and applicants simply bypassed it and went directly to court.

The panel was also substantially quicker than court in making its decisions, allowing takeovers to proceed while ensuring shareholders were adequately informed. The median time for a panel decision was 14 days, including weekends. "There is always scope for improvement, but in its revamped form the panel has been successful," Professor Ramsay said.

The panel is close to completing an internal review of its operations. The findings of the review are expected to be finalised within the next one or two months.



Uncertainty: Ian Ramsay says there are concerns the Takeovers Panel could be compromised by court challenges

Picture: Michael Potter