

# FINANCIAL REVIEW

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## Takeovers Panel used for tactical edge

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The body that oversees company takeovers is sometimes seen as a useful tool, Tracy Lee writes.

Applications to the **Takeovers Panel** have been used by some companies as tactics to force bidders or targets to disclose information, conceded Ian Ramsay, a six-year member of the panel.

"On occasion, the panel will have received tactical applications, but I think the panel is pretty tough on deciding not to conduct proceedings when it feels as though the application lacks sufficient merit," said Professor Ramsay who co-authored a report that examines the first five years of the operation of the panel.

Blake Dawson Waldron mergers and acquisitions partner Elizabeth Pakchung confirmed that warring parties viewed applications to the panel as "a good aggressive move" when earlier negotiations had failed.

"It's effective because you get what you want, you get it quickly and you can force the other side to provide the information," Ms Pakchung said.

The report, released yesterday, shows that despite highly-publicised applications involving big takeovers - such as Toll Holdings's \$6.2 billion bid for Patrick Corp - smaller companies and the mining sector are the most frequent users of the panel.

Of the 153 applications covered by the study from 2000 to 2005, more than half belong to the materials sector, with mining companies forming the largest proportion.

The report also said the median market capitalisation of listed public company bidders was \$31 million while targets were just \$27 million. But these calculations don't include figures from the past six months that would have included multibillion-dollar groups such as AGL, Alinta, Toll Holdings and Patrick Corp.

The **Takeovers Panel** was created in 2000 to succeed the Corporations and Securities Panel. It was given wider powers, such as the ability to unwind share transactions or compel a company to disclose information, and has been far more active than its predecessor, publishing 189 decisions in the six years to July 31.

The Corporations and Securities Panel made only four decisions from 1991 to 1999.

The report finds that companies generally seek an application for what are called unacceptable circumstances. These can include a decision that a rival party has not produced sufficient information or has not given shareholders enough time to consider a bid.

Ms Pakchung said an application for unacceptable circumstances might be sought in rights issues where a bidder was trying to gain control of a target via the underwriting process.

"This is especially the case if the bidder is associated or related to the underwriter, and in those circumstances an aggrieved party can seek to have the allotted shares unwound or the voting rights frozen," she said.

While companies may go to the panel to get more information or even delay a transaction, the report shows that less than 20 per cent of applications for unacceptable circumstances resulted in a declaration.

Professor Ramsay said this was probably because the panel usually brokered a compromise beforehand.

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