



# Takeovers Panel faces grim future

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THE success of the Takeovers Panel in its first six years of operation is under a cloud with the prospect of more lawyers finding ways to bypass it.

The panel was set up in 2000 to resolve takeover disputes without resorting to the courts. Its future is now in question following a Federal Court decision in the Glencore case last year that it had exceeded its powers.

This could see a return to the days of litigation, banned six years ago, and increase the billable hours of law firms determined to play hardball on takeovers. Panel member Ian Ramsay said: "The issue that is a live one is whether there is a possibility of heading back to the era of litigation."

He said there was a prospect of the panel turning more legalistic because it

was now facing the threat of judicial review with chances of more companies trying to find ways to beat it in court. And the more legalistic it became, the more likely it was to delay its responses to applications, Professor Ramsay said.

A report released yesterday by the University of Melbourne's Centre for Corporate Law and Securities Regulation found that the median time the panel took to make a decision was 14 days.

Professor Ramsay, who is also the director of the centre, said the market was still digesting the implications of the Federal Court's judgement against the Takeovers Panel in its fight with Glencore International over the use of equity swaps during last year's Centennial Coal takeover of Austral Coal.

When the panel raised concerns about the way Glencore disclosed equity swaps during its merger with Centennial

Coal last year, Glencore took the panel to the High Court, threatening its existence. Glencore claimed the panel was exercising judicial power when it was not a court. The High Court referred the case to the Federal Court and Glencore won.

While Justice Emmett upheld the panel's constitutionality, he overturned its decisions. Professor Ramsay said the Glencore decision could mark a turning point in the panel's fortunes. "What we have learned from Glencore is that there is always an ongoing threat of litigation while a bid is under way," he said.

The centre's report found that in its first five years of operation, the panel had made 153 decisions. As of July 31, it had published 189 decisions.

Its predecessor, the Corporations and Securities Panel, made only four decisions during the years it operated, from 1991 to 1999.