

STAKEHOLDERS GIVE TAKEOVERS PANEL A BIG TICK

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Legal Briefings - By **Tony Damian** and **Clayton James**

SUMMARY

- Respondents to the second public stakeholder survey for the Takeovers Panel (**Panel**) indicated a very high level of satisfaction with the Panel, its processes and executive.
- While the results were overwhelmingly positive, suggested areas for improvement included the expertise and experience of sitting Panel members (particularly M&A experience), the Panel's ability to deal with novel issues and guidance provided to the market concerning the types of future matters that would be acceptable or unacceptable.
- The results of the survey reinforce the view that the Panel provides a professional and independent forum for the resolution of takeover disputes.

TAKEOVERS PANEL 2015 STAKEHOLDER SURVEY

The results of the second public stakeholder survey on the Takeovers Panel have recently been released. In summary, the survey results indicated:

- a high overall level of satisfaction with the Panel, and
- stakeholders were particularly satisfied with the performance of the Panel and the Panel Executive.

The 124 respondents to the survey were drawn from legal practitioners, investment bankers, companies, regulators and past and present Panel members. We look at the results of the survey in more detail below.

PANEL PERFORMANCE

In terms of overall performance, a substantial proportion of respondents were satisfied or very satisfied with the Panel. In looking at the various metrics of the Panel's performance, the survey indicated:

- that respondents had a positive view of the performance of both the Panel and its executive,
- the Panel was seen as independent body for the resolution of disputes in relation to control transactions,
- the Panel Executive was viewed as professional and helpful by respondents, with respondents also indicating a high regard for the expertise of the Panel Executive,
- where the jurisdiction of the Panel and the Courts overlapped, 82% of respondents indicated a preference for dispute resolution by the Panel. Primary reasons given were speed, efficiency and the commercial expertise of the Panel, and
- a majority of respondents considered that the Panel conducted proceedings neither too often nor not enough – with roughly a third of respondents of the view that proceedings were not commenced enough and 5% considering proceedings were commenced too often.

DEVELOPMENT AREAS

Amongst the positive feedback for the Panel, areas suggested for improvement by respondents included:

- the expertise and experience of Panel members, in particular a desire by respondents for stronger M&A experience for sitting members of the Panel,
- the ability of the Panel to handle matters with novel or unique issues, and
- the provision of guidance to the market as to the types of circumstances which may be acceptable or unacceptable.

OTHER FINDINGS

Other interesting findings from the survey included:

- strong support from respondents for the continuing ban on media canvassing whilst a Panel matter is being heard and decided – particularly amongst companies and regulators,
- almost half of respondents agreed that the Panel should award costs more often in matters,
- respondents were divided on whether the Panel should hold more conferences, with approximately one third agreeing, disagreeing or otherwise unsure, and
- slightly under half of respondents felt the Panel provides the right amount of legal analysis, with 33% suggesting decisions contained not enough legal analysis and 22% too much.

COMPARISON WITH THE PANEL'S 2006 PANEL STAKEHOLDER SURVEY

Broad themes emerging from the 2006 and 2015 surveys include:

- the Panel and Panel Executive being viewed positively by stakeholders – with the Panel perceived as professional, independent and efficient,
- no significant or widespread calls for change to the Panel or its processes were identified, and
- in terms of development areas, one common focus area on both surveys was around guidance from the Panel as to circumstances which may be considered unacceptable.

COMMENTARY

The 2015 stakeholder survey reaffirmed the findings of the 2006 stakeholder survey – specifically that the Panel has been successful in achieving its objectives of reducing tactical litigation and the costs of takeovers and supporting the Eggleston principles underpinning the Australian takeovers legislation. The Panel is seen by its stakeholders as professional, independent and pragmatic.

A copy of the survey is available from the Panel’s website at www.takeovers.gov.au.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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