

TAKEOVERS PANEL COMPOSITION

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Legal Briefings - By **Rodd Levy**

SUMMARY

- Until this year, it has been a practice that members are appointed to the Panel for an initial three year term followed by, in the ordinary course, subsequent reappointments for two further three year terms.
- This system of retirement by rotation helps to ensure that applications are dealt with efficiently and consistently with previous decisions.
- The practice has been put into question by the recent round of appointments. No members whose terms were expiring were reappointed, irrespective of whether they had only served one or two terms.
- In the interests of ensuring that the Panel remains successful, it is to be hoped that Panel appointments in the future will revert to the old practice.

PANEL COMPOSITION

The Takeovers Panel has achieved remarkable success in the fourteen years since it became Australia's primary dispute resolution body for takeover bids.

This success, measured primarily in efficiency and predictability of decision-making, has contributed to greater confidence in the Australian market for corporate control, which, of course, was one of the objectives the Panel was designed to achieve.

The recent round of appointments and retirements of members of the Panel, announced in April, has changed a long-standing practice and raises concerns about whether the effectiveness of the Panel could be undermined.

Until this year, it has been a practice that members are appointed to the Panel for an initial three year term followed by, in the ordinary course, subsequent reappointments for two further three year terms.

Given the differing annual commencement dates for each batch of Panel appointments, this system of retirement by rotation has meant that, at any one point in time, at least two-thirds of the Panel's members have more than one term's experience as a Panel member, while the other one-third are relatively newly appointed. The Panel can then draw on experienced members while, at the same time, giving experience to newer members.

Given the low number of Panel applications in recent years, the availability of members with several years' experience is important in ensuring applications are dealt with efficiently and consistently with previous decisions. This period of time is important given that recent history shows that the number of applications to the Panel has diminished.

The practice has been put into question by the recent round of appointments. No members whose terms were expiring were reappointed, irrespective of whether they had only served one or two terms. This led to fifteen retirements, of whom nine members had served less than three terms and six had served only one term. This was despite those members being extremely able and experienced in takeovers and stock markets.

The five new appointees are all very capable with experience that is entirely appropriate for the Panel. However, the loss of nine members who had served less than the normal period creates a risk that consistency and predictability may be affected.

If the new practice continues, the Panel will eventually comprise only members who have less than three years' standing.

That would jeopardise the smooth workings of the Panel.

In the interests of ensuring that the Panel remains successful, it is to be hoped that Panel appointments in the future will revert to the old practice.

KEY CONTACTS

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



RODD LEVY

PARTNER,
MELBOURNE

+61 3 9288 1518
rodd.levy@hsf.com

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