

UPDATE: FINAL CHANGES TO TAKEOVERS PANEL GUIDANCE NOTES CONFIRMED

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Legal Briefings - By **Simon Reed** and **Sam Kings**

SUMMARY

The Takeovers Panel recently published revised versions of its Guidance Notes on reviewing decisions (Guidance Note 2) and remedies generally (Guidance Note 4), containing minor edits following public consultation.

PROPOSED CHANGES TO GUIDANCE NOTES

In March 2015, the Takeovers Panel indicated that it was considering revising its Guidance Notes on reviewing decisions (Guidance Note 2) and remedies generally (Guidance Note 4).

The Takeovers Panel issued Consultation Papers (including drafts of the proposed revised Guidance Notes) inviting comments on the proposed changes. The main changes proposed were to clarify:

- in respect of Guidance Note 2, the timing and process for an application for review (including an application to obtain the President's consent if required), and
- in respect of Guidance Note 4, that the parties may, at any point during the process, offer a resolution to remedy potential unacceptable circumstances and that an agreed resolution (such as by undertakings) may remove the need for the Takeovers Panel to make a declaration.

We discussed the proposed changes to Guidance Note 4 in our March 2015 newsletter.¹

GUIDANCE NOTE 2

The Takeovers Panel received submissions from the Law Council of Australia in relation to the proposed changes to Guidance Note 2.

The Law Council raised a good point in its submissions: it suggested that the deadline for making applications for review of Takeovers Panel decisions be extended to 5 business days (from 2 business days) after the date of the original decision. The Law Council suggested that the 'tight time frame' was particularly an issue where a participant is located overseas in a different time zone or where the decision to bring an application for review requires careful consideration.

The Takeovers Panel did not make any changes to its policy as the time period is mandated by the Corporations Regulations and the Corporations Act and hence would require legislative amendment (a point noted by the Law Council).

However, while the Takeovers Panel provisions of the Corporations Act were only recently amended in March 2015, it would be worth the Parliamentary Joint Committee on Corporations and Financial Services (which reports to Parliament on potential amendments to the Corporations Act) considering the change proposed by the Law Council when it tables its annual report to Parliament later this year.

GUIDANCE NOTE 4

The Takeovers Panel received informal feedback that Guidance Note 4 should make it clear that if a proposed resolution is received early in the proceedings it will be considered more favourably by the Takeovers Panel.

Based on this feedback, the Takeovers Panel made a further change to the draft Guidance Note circulated with the Consultation Paper to clarify that it will be 'more receptive to resolutions ... offered earlier in the process' and that it may 'require more from a party offering a resolution if the Panel has already communicated its intention to make a declaration'.

ENDNOTES

1. See article – [Revised guidance: Takeovers Panel welcomes remedy proposals.](#)

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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