

Ms Toni Matulick
Committee Secretary
Parliamentary Joint Committee on
Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
Via email: corporations.joint@aph.gov.au



Dear Ms Matulick,

Parliamentary Joint Committee examination of the operation of the Takeovers Panel

We refer to your correspondence of 5 March.

The Business Law Section of the Law Council of Australia (**BLS**) welcomes the opportunity to provide input into the Parliamentary Joint Committee on Corporations and Financial Services' examination of the operation of the Takeovers Panel (**Panel**).

The Panel is the main forum for resolving takeover disputes in Australia, and accordingly has an important role in the financial services system. BLS considers that there has been a significant improvement in market standards and in the efficiency of resolution of disputes regarding takeovers since the introduction of the Panel in its present form.

In particular:

- The Panel provides for the prompt resolution of disputes in the takeovers context, while ensuring that the outcome of bids have been decided on the basis of their commercial merit.
- The Panel strikes a reasonable balance between having regard to legal principles and adopting an informal and non-legalistic approach in its decision-making.
- This has avoided the costly, delaying and disruptive litigation which used to be common in the takeovers arena.

We understand that a copy of the BLS Report on the Survey on the Takeovers Panel conducted in May 2010 has been provided to the Committee. Some of the key themes which emerged from this survey of BLS were as follow:

- 1 Despite the Panel's informal and non-legalistic approach to dispute resolution, most market participants surveyed considered that the Panel gives sufficient regard to legal principles contained in the Corporations Act in its decision making.
- 2 While there has been debate about whether section 602 principles provide adequate guidance to the Panel when making its decisions, the Panel are significantly better equipped than the courts to apply these principles and have been doing so effectively.
- 3 The Panel does not satisfy itself to the same level as a court around questions of association and relevant interest. However, many of those surveyed queried whether to do so would be the correct approach. The inherent success of the Panel is in its shift away from a legalistic approach to resolving takeover disputes.

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- 4 The move in the recent years to more simple Panel documents has been beneficial. Those surveyed were generally satisfied with the Panel's Guidance Notes. The Panel's reasons achieve the right balance between length and guidance as to what constitutes unacceptable circumstances.

The BLS congratulates the Takeovers Panel on its ongoing good work and supports the continuation of the Takeovers Panel in its current form. We would be happy to expand on any of the above themes if that is helpful.

If you have any questions, in the first instance please contact [REDACTED]
[REDACTED]

Yours sincerely,

Teresa Dyson
BLS Deputy Chairman

24 March 2014