



Friday, 13 January 2005

Exaggeration Regarding Review of Takeovers Panel

The Panel has replied to an article in this morning's *Australian* newspaper in the following terms:

Dear Sir,

Michael McKenna's article (Takeovers Panel Faces Review, page 15, 13 January) suggests that the Government has ordered an examination of the Panel's constitutional and legal position, because the decision in *Glencore v Takeovers Panel* exposed defects in the Panel's legal underpinnings. Nothing could be further from the truth.

As advised to your reporter, the Panel itself initiated a review of its own procedures, consulting the business and legal communities, in order to see how we can work better within the existing legal framework. This was planned long before the Glencore decision and independently of it. Initially the Panel had planned to complete the review before the transactions to which the Glencore decision related. The Treasury is aware of the review and supports it, but will not be directly involved in it.

We neither require nor intend sweeping reforms to the legislation under which the Panel works. While it is possible that proposals to change the Panel's legal framework will emerge from the review, that is not its primary purpose. In particular, there will be no review of the Panel's position under the constitution, which was specifically confirmed by Emmett J in the Glencore decision.

Nor do we propose legislative amendments in order to prevent a repeat of that decision. While we have proposed some minor amendments to the Government, they have nothing to do with the Glencore matter or any of the issues it raised, and they were already proposed long before that matter came up.

The issues in the review concerning conflicts of interest are not aimed at "toughening" the selection of sitting Panels. Rather, they are intended to ask whether the Panel is currently too strict in deciding which members should not sit in particular proceedings.

The Glencore decision concerned how one particular decision was taken. It did not expose systemic failure in the Panel's legal or constitutional underpinnings or in its operations. In fact, the Panel has continued to deal with the same type and number

of matters as before that decision. While we have refined our procedures in light of the Glencore decision, the Panel continues to be quick, non-adversarial and focused on the best outcomes for shareholders and the market.

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