



Corporations Amendment (Takeovers) Bill 2007

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Law and Bills Digest Section

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Corporations Amendment (Takeovers) Bill 2007

Date introduced: 14 February 2007

House: House of Representatives

Portfolio: Treasury

Commencement: 28th day after the date of Royal Assent

Purpose

This Bill proposes amendments to the *Corporations Act 2001* to improve the operation of the Takeovers Panel.

Background

The Takeovers Panel was originally established in 1991. It was originally called the Corporations and Securities Panel. Its powers were quite different to the current Takeovers Panel. Until 1999 the Panel was used in only four cases.

As a result of the Corporations Law Economic Reform Program, the Corporations and Securities Panel was renamed the Takeovers Panel and its powers and functions were significantly altered. The renamed Takeovers Panel commenced operation in 2000. It is now the main body to hear disputes concerning a takeover whilst a takeover bid is in progress.

The Takeovers Panel is created by the *Australian Securities and Investments Commission Act 2001* and it is invested with powers under the *Corporations Act 2001*. The Corporations Amendment (Takeovers) Bill 2007 makes amendments to the Corporations Act to address issues raised by the Federal Court in *Glencore International AG v Takeovers Panel*¹ and *Glencore International AG v Takeovers Panel*², about the operation of the Takeovers Panel.

Main provisions

'Substantial Interest'

Under section 657A of the Corporations Act, the Panel may declare circumstances to be unacceptable having regard to their effect on the acquisition or proposed acquisition by a person of a 'substantial interest' in the company or another company.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

‘Substantial interest’ is not defined in the Act. The Bill, in **item 2**, proposes to insert a definition of ‘substantial interest’ into the Act. Included in that definition is a power for regulations to be made to specify matters that would be classified as a ‘substantial interest’.

The Parliamentary Joint Committee on Corporations and Financial Services inquired into the proposed amendments contained within the Bill. The inquiry report³ noted that some submissions to the inquiry expressed concern that the proposed definition may create confusion.⁴ The report did however note that the Bill had been amended to include a regulation making power (the regulation making power was not contained in the draft Bill that witnesses had commented upon). The report also noted that the Explanatory Memorandum includes a commentary which ‘provides guidance to the Panel and its stakeholders regarding what would constitute a ‘substantial interest’’.⁵

Unacceptable circumstances

Item 3 of the Bill proposes to amend paragraph 657A(2)(a) of the Act so that the Panel can make an ‘unacceptable circumstance’ declaration where circumstances may have future consequences that fall within sub-paragraph 657A(2)(a)(i) or (ii). The Explanatory Memorandum explains that this amendment means that ‘the Panel can make a declaration before any effect has actually occurred’.⁶

Item 4 amends the current 657A(2)(b) so that when determining whether a circumstance is unacceptable, the Panel can consider the objects of Chapter 6 – ‘Takeovers’, which are set out in section 602 of the Act. **Proposed paragraph 657A(2)(c)** is a recasting of current paragraph 657A(2)(b) to include future and possible future contraventions of the takeovers provisions in the Corporations Act.

The Panel's power to make orders

The powers of the Panel to make orders are set out in section 657D of the Corporations Act. **Item 6** of the Bill proposes to amend paragraph 657D(2)(a) so that the Panel can make orders for the benefit of persons who are not only affected (this is the current law) but also persons that *will be or are likely to be affected* by the circumstances at issue. The orders can be global in nature rather than specifically tailored to each individual.

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Concluding comments

This is a small Bill which addresses some of the issues raised by the Federal Court in two recent court decisions *Glencore International AG v Takeovers Panel*⁷ and *Glencore International AG v Takeovers Panel*.⁸ The amendments seek to improve the operation of the Takeovers Panel.

Endnotes

1. [2005] FCA 1290.
2. [2006] FCA 274.
3. The report can be found at the following address
http://www.aph.gov.au/senate/committee/corporations_ctte/exposure_draft/report/index.htm, [27 March 2007].
4. Parliamentary Joint Committee on Corporations and Financial Services, Corporations Amendment (Takeovers) Bill 2006 [Exposure Draft], February 2007, p. 11–12.
5. *ibid.*, p. 13.
6. *Corporations Amendment (Takeovers) Bill 2007, Explanatory Memorandum*, p. 5.
7. [2005] FCA 1290.
8. [2006] FCA 274.

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