



15 October 2010

Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Sir/Madam

[Corporations Amendment \(No. 1\) Bill 2010](#)

Thank you for the opportunity to comment on the Corporations Amendment (No. 1) Bill 2010.

Please find attached a copy of Telstra's submission.

If you have any queries or would like to discuss our submission further, please do not hesitate to contact my office on 03 8647 3884.

Sincerely

Carmel Mulhern  
Company Secretary  
Office of the Company Secretary  
[carmel.mulhern@team.telstra.com](mailto:carmel.mulhern@team.telstra.com)



## Submission by Telstra Corporation Limited

### Corporations Amendment (No. 1) Bill 2010

#### Introduction

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This submission is made in response to the Senate Economics Committee's request for comments on the Corporations Amendment (No. 1) Bill 2010 (**Bill**). Specifically, Telstra wishes to make a submission in respect of the proposed amendments to the *Corporations Act 2001* (Cth) (**Act**) which relate to access to company share registers.

Telstra, Australia's leading telecommunications and information services company, has the largest shareholder base (approximately 1.4 million shareholders) in Australia. Telstra shares the Government's concerns about protecting information contained in company share registers and fully supports the introduction of legislation to protect this information from improper use.

Telstra fully supports the Bill which seeks to better regulate access to companies' share registers and the use of share register information. In particular, Telstra is supportive of the introduction of a provision into the Act which expressly grants a company the ability to prevent members or third parties from accessing its share register unless the members or third parties satisfy the company that they wish to access or take copies of the register for a 'proper purpose'. Telstra is also supportive of the introduction of offence provisions to prevent the misuse of share register information.

Telstra proposes that the Bill could be improved by amendments in the following respects to better achieve the intention behind the proposed legislation:

1. In addition to the 'prescribed purposes' to be contained in the regulations, draft section 173(3A)(b) should also refer to purposes which would otherwise be in contravention of sections 177(1) of the Act;
2. A company should not be in breach of draft section 177(1AA)(b) if it relies on the purpose set out in an application for access to information on its share register (**Access Application**) in determining whether to disclose that information; and
3. A 'proper purpose' test should also be introduced in respect of the register of beneficial interests kept by companies under section 672DA of the Act.

#### Interaction between prescribed purposes and other prohibitions

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Under the proposed amendments in the Bill, companies are able to refuse access to the share register if the person making the request does not disclose the purpose for which they intend to use the information on the share register or if they disclose an intention that is 'improper'. What is 'improper' is to be determined by what is a 'prescribed purpose' in the regulations for the purposes of draft section 173 (3A)(b) (**Prescribed Purpose**). However, as the 'validity' of a request under draft section 173(3A) is tied to what is a Prescribed Purpose, companies could still be compelled to provide copies of the register if the purpose stated in an application is 'improper' but not a Prescribed Purpose.

Section 177(1) of the Act restricts the use and disclosure of information on share registers. However, if this restricted purpose is not a Prescribed Purpose, it is unclear whether a company can refuse access to its share register if an Access Application sets out a purpose which is in contravention of section 177(1).

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Telstra considers it would be beneficial for the legislation to be amended so that in addition to the 'prescribed purposes' contained in the regulations, draft section 173(3A)(b) should also refer to purposes which would otherwise contravene section 177(1) of the Act. This would give companies the discretion to refuse access to its share register where the person intends to use the information for an improper purpose (ie: in breach of section 177(1)) which is not a Prescribed Purpose. Telstra believes this change would be consistent with the spirit and intended purpose of the Bill.

## **Offences and Safe Harbour protections**

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Draft section 177(1AA)(b) makes it an offence for a person to disclose information from a share register knowing that information is likely to be used for a Prescribed Purpose. Telstra suggests that it be made clear that this offence does not apply to a disclosing company when it relies on the purpose set out in an Access Application in deciding whether to disclose such information.

A company should be entitled to accept, at face value, the purpose stated on an Access Application. It is feasible that a company may have questions as to whether a purpose set out in an Access Application is in fact the real purpose behind the request. This may be due to a number of reasons such as, past experiences with the applicant or information provided by a third party. Without safe harbour protections for companies who rely on the purpose stated in an Access Application, considerable uncertainty is created about the nature and extent of inquiries or investigation a company would need to undertake to ensure the actual purpose behind an Access Application is not a Prescribed Purpose. In addition to providing certainty for companies when considering such applications, such safe harbour protections would also remove the potential for dispute.

## **Registers of beneficial interest holders – section 672DA**

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Telstra considers that a 'proper purpose' test should be introduced for all company register requests, including requests for copies of registers of beneficial interest holders kept under section 672DA of the Act. Telstra notes that similar issues arise in respect of access to the register of beneficial interest holders.

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**Telstra Corporation Limited**  
**15 October 2010**