

# Chapter 1

## Introduction

1.1 On 7 September 2006, the Treasurer, the Hon. Peter Costello MP, released an exposure draft of the Corporations Amendment (Takeovers) Bill 2006, along with an explanatory statement. Treasury sought written comments by 5 October 2006.

1.2 The bill proposes amendments to Chapter 6 of the *Corporations Act 2001*, which regulates corporate takeovers and the powers of the Takeovers Panel. According to the explanatory statement the bill is:

designed to allow the Panel to continue to act:

- in an informal, effective, efficient and expeditious manner;
- as the primary forum for resolving disputes during takeover bid periods;
- relying on the specialist expertise of its members;

so that the outcome of any takeover bid can be resolved by the target shareholders on the basis of its commercial merits.<sup>1</sup>

1.3 In particular, the bill proposes to:

- amend the definition of 'substantial interest';
- allow the Panel to take account of likely future effects of circumstances;
- before the Panel makes an order, limit those able to make submissions to each person to whom a proposed order is directed; and
- set a time limit for the Panel to review the decision of an earlier Panel.<sup>2</sup>

1.4 The bill was prompted by the Federal Court's *Glencore* decisions which interpreted the limits of the jurisdiction of the panel as set out in the current legislation. Concerns were raised with the Government that as a result of *Glencore*, the Panel's powers and jurisdiction could be viewed in a way that is too narrowly formulated to enable the Panel to perform effectively the role envisaged for it by Parliament.

### Conduct of the inquiry

1.5 At a private meeting on 11 October 2006, the Parliamentary Joint Committee on Corporations and Financial Services agreed to inquire into the Exposure Draft of the Corporations Amendment (Takeovers) Bill 2006. The committee agreed to a

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1 Department of the Treasury, *Corporations Amendment (Takeovers) Bill 2006 — Explanation*, September 2006, p. 1.

2 The Exposure Draft and explanatory statement can be found on the Department of the Treasury's website at [www.treasury.gov.au](http://www.treasury.gov.au).

closing date for submissions of 17 November 2006 to allow submitters to provide the committee with modified versions of the submissions made to Treasury. A list of submissions appears at Appendix 1.

1.6 The committee held one public hearing on this reference in Canberra on 1 December 2006. Witnesses who appeared before the committee are listed at Appendix 2. The Hansard transcript of the hearing is available at [www.aph.gov.au/hansard](http://www.aph.gov.au/hansard).

1.7 To ensure the bill's passage through Parliament during the Autumn sittings, the Corporations Amendment (Takeovers) Bill 2007 was introduced in the House of Representatives on 14 February 2007. The committee notes that minor changes were made to the bill as a result of submissions made to Treasury and to this inquiry, especially with regard to the 'substantial interest' concept. These changes are discussed in Chapter 3.

1.8 The committee originally agreed to report by 1 March 2007. In order to facilitate the timely passage of the bill, the committee agreed to bring forward its reporting date to 23 February 2007.

1.9 The remainder of this report is divided into two chapters. Chapter 2 provides an overview of the Takeovers Panel, its origin, role and functions and a brief discussion on the *Glencore* decisions. Chapter 3 explores the provisions of the bill, discusses the issues raised by submitters, and makes several related recommendations.