

2 November 2006

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Email: corporations.joint@aph.gov.au

Dear Sir

PJC Inquiry - Exposure Draft of the Corporations Amendment (Takeovers) Bill 2006

The Australian Institute of Company Directors (AICD) is the principal professional body representing directors in Australia with over 22,000 individual members. Our members are directors of a wide range of entities: publicly-listed companies, private companies, not-for-profit organisations and government bodies.

The AICD appreciates the opportunity to comment on the draft Corporations Amendment (Takeovers) Bill 2006 (Bill) which is of importance for directors. We have already provided our comments on the Bill to Treasury and enclose a copy of that submission for the Committee's consideration. We would welcome the opportunity to further input into the inquiry.

Please contact me on (02) 8248 6600 if you have any questions.

Yours Faithfully

Gabrielle Upton
Legal Counsel/Senior Policy Officer

11 October 2006

The Manager
Market Integrity Unit
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: corporationstakeoversbill@treasury.gov.au

Dear Sir

Corporations Amendment (Takeovers) Bill 2006

The Australian Institute of Company Directors (AICD) appreciates the opportunity to comment on the draft Corporations Amendment (Takeovers) Bill 2006 (Bill). Thank you for an extension of time to lodge our submission.

AICD is the principal professional body representing directors in Australia and has over 22,000 individual members. Our members are directors of a wide range of corporations: publicly-listed companies, private companies, not-for-profit organisations and government and semi-government bodies.

The Bill has particular importance for company directors who carry primary responsibility for compliance with the law in a takeover, whether the company is a bidder or a target. Company directors also face significant potential civil and criminal liability under Chapter 6B of the Corporations Act 2001 (CA).

AICD supports the concept of the Panel and its commercial approach. AICD does not support the courts being involved in the determination of takeover disputes.

Of concern to AICD is that directors should not be exposed to uncertainty in statutory law. We support in principle clarification of the concept of *substantial interest* for the purposes of section 657A of the CA in the light of the *Glencore* decision, and agree that the Panel should be able to make orders based on the *likely* as well as the *actual* effect of the circumstances under challenge.

AICD is, however, concerned that the proposed definition of *substantial interest* is capable of both uncertain interpretation and application. The key issue appears to be that

it must relate to securities of the relevant company but need not be confined to *relevant interests*. The amendment should simply reflect this approach.

The AICD is also concerned that the language of proposed new paragraph 657(2)(b) will also give rise to undesirable uncertainty about the Panel's jurisdiction and that it could be vulnerable to constitutional challenge on the basis that it is an attempt to give the Panel the power to define its own jurisdiction.

Finally, AICD is concerned that the proposed re-wording of paragraph 657D(1)(a) might unduly narrow the range of persons affected by a proposed order who would be entitled to an opportunity to make submissions to the Panel.

Please contact me on (02) 8248 6600 if you have any questions regarding our submission.

Yours Faithfully

Gabrielle Upton
Legal Counsel/Senior Policy Officer