



**ASIC**

Australian Securities & Investments Commission

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Malcolm Rodgers  
Executive Director, Regulation

17 November 2006

The Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
Department of the Senate  
Parliament House  
Canberra ACT 2600  
**By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)**

Dear Secretary

**Inquiry into the Exposure Draft of the Corporations Amendment (Takeovers) Bill 2006**

The Australian Securities and Investments Commission (ASIC) welcomes the introduction of the Corporations Amendment (Takeovers) Bill 2006 (Bill).

ASIC recognises there is some uncertainty regarding the jurisdiction and effective operation of the Takeovers Panel following the judgments of Emmett J in *Glencore International AG v Takeovers Panel* (2005) 220 ALR 495 and *Glencore International AG v Takeovers Panel* (2006) 151 FCR 77 (the Glencore decisions). Accordingly, we support amending the *Corporations Act 2001* to:

- clarify the Panel's jurisdiction;
- enable the Panel to fulfil its role as the primary forum for takeover disputes in Australia; and
- enable the Panel to deal with takeover disputes in an informal, effective, efficient and expeditious manner.

ASIC believes the Bill will be effective in achieving these aims.

We note the Law Council of Australia's submission to the Treasury in response to the Treasurer's call for comments on the Bill on 7 September 2006. In its submission (on

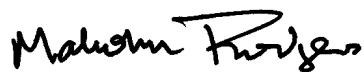
pages 2 to 5), the Law Council argued the proposed definition of “substantial interest” was unnecessary, not clearly applicable to equity derivatives and might provide an avenue for future challenges to the Panel’s jurisdiction.

In our view, an amendment to section 602 to make it clear a “substantial interest” is not limited to technical definitions of "association" and "relevant interest" is an necessary complement to the other amendments contained in the Bill. The amendments are not designed to deal with equity derivatives *per se*, but to deal with broader implications of the Glencore decisions for the Panel’s jurisdiction.

The proposed paragraph 657A(2)(b) on its own would not remove the uncertainty caused by the Glencore decisions. That paragraph would allow the Panel to declare circumstances to be unacceptable circumstances having regard to the purposes of Chapter 6 set out in section 602. The purposes set out in paragraphs 602(b) and (c) rely on the phrase “substantial interest”, and so the Panel may still find itself limited by an aspect of the Glencore decisions when making a declaration based on proposed paragraph 657A(2)(b).

ASIC is happy to provide any other assistance the Committee might require in relation to this inquiry.

Yours sincerely

A handwritten signature in black ink that reads "Malcolm Rodgers". The signature is written in a cursive, slightly slanted style.

Malcolm Rodgers  
Acting Commissioner and Executive Director, Regulation