



Australian Government

Takeovers Panel



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Panel

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The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament house
PO Box 6100
CANBERRA ACT 2600

Dear Mr Sullivan,

**INQUIRY INTO THE EXPOSURE DRAFT OF THE CORPORATIONS AMENDMENT
(TAKEOVERS) BILL 2006**

Following our recent telephone conversation, the Panel would like to make a supplementary submission to address an issue raised at the public hearing held by the Committee on 1 December 2006.

In his discussions with the Treasury representatives, the Chairman referred to suggestions by the Law Council that the proposed definition of ‘substantial interest’ may cover interests not related to securities, such as employees, customers or suppliers. The Law Council then suggested that this may encourage the Panel to assert jurisdiction over such matters. The Chairman asked Treasury representatives why the draft legislation had not expressly precluded that interpretation.

Our primary submission is that the experience of the last 25 years is that such exceptions are unnecessary. The proposed definition of substantial interest will merely restore the circumstances on which the Panel and its predecessor regulators have acted, without the suggested problems arising, over the last 25 years. The suggestion that the Panel would, or could, inappropriately assert jurisdiction over matters unrelated to takeovers ignores past experience and the fact the Courts will inevitably interpret the definition having regard to its context (Chapter 6) and subject matter (takeovers). In any case, the Panel would not require disclosure of interests not related to securities or takeovers, since that would not be consistent with the purposes of the takeovers laws as set out in section 602 of the Corporations Act (which the Panel is obliged to take into account).

Furthermore, consistent with our other submissions, we consider that introducing express exceptions to the definition would be undesirable because they run the risk of creating (or even signposting) “loopholes” that can be exploited to avoid the requirements and purposes of the Act.

We would be happy to clarify any concerns of the Committee in relation to the above.

Yours sincerely

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