



The Hon David Bradbury MP

FEDERAL MEMBER FOR LINDSAY

Parliamentary Secretary to the Treasurer

29 September 2010

CORPORATIONS AMENDMENT (NO. 1) BILL 2010

Second Reading

Mr BRADBURY (Lindsay) (Parliamentary Secretary to the Treasurer) (11:29 AM)

I move: That this bill be now read a second time.

Today I introduce a bill to amend the Corporations Act 2001, the Australian Securities and Investments Commission Act 2001 and the Telecommunications (Interception and Access) Act 1979.

The bill contains two separate but related sets of measures, both aimed at improving investor trust and confidence in the Australian share market as well as targeting misconduct.

The first set of measures reform the regime governing access to information contained on company member registers, specifically banning improper uses of that information.

The second set of measures increase the penalties for market offences in the Corporations Act, such as insider trading, and enhance the investigative powers of the Australian Securities and Investments Commission (ASIC) to catch those who would commit these offences. This set of measures also clarifies that certain off-market unsolicited share offers must remain open for at least one month from the date of the offer.

Access to Registers

A company's register of members is required to contain members' names, postal addresses and shareholding details. Currently, any person can obtain access to a copy of a company's register without providing any indication of the purpose for which they intend to use the information.

Today, the government has introduced legislation to prevent members' details being used for improper purposes.

The improper purposes will be specified in regulations and the government has made it clear that this reform is intended to have the effect of prohibiting the practice of making unsolicited below-value share offers to shareholders.

The bill will do this by limiting the instances in which a copy of a register of members of a company or registered scheme may be obtained.

A person seeking a copy of the register will have to apply to the company and state the purpose for which they intend to use the information contained in the copy of the register. The company can refuse to provide a copy where the purpose is listed as an improper purpose, which will be provided in the corporations regulations.

Examples of these improper purposes are:

making an unsolicited off-market offer to purchase shares in a listed company—other than as part of a genuine takeover offer;

to enable the solicitation of donations from the listed members of a company;

the solicitation of a member of a company by a broker; and

gathering information about the personal wealth of a member of a company.

Going forward, this bill will also prevent persons from using information obtained from registers for improper purposes; even where the information had been obtained by them prior to the commencement of this bill.

This bill will ensure that vulnerable or less sophisticated shareholders are protected from individuals or businesses that seek to profit by purchasing their shares for less than their value.

Penalties for Market Offences

The second set of measures contained in this bill includes provisions that increase the criminal penalties associated with breaches of the insider trading and market misconduct provisions in part 7.10 of the Corporations Act.

Insider trading and market manipulation can distort Australia's financial markets and cause serious harm to their fair and efficient functioning. These markets function best when information is widely dispersed and investors have confidence in their integrity.

It is essential that the penalties reflect the serious impact that breaches of these provisions have on financial markets.

The benefit that can be gained from engaging in insider trading or market manipulation often far outweighs the maximum penalty that can currently be imposed for a breach.

This bill will increase the maximum fine for individuals found to have breached the provisions to 4,500 penalty units (currently \$495,000) or three times the benefit attributable to the breach. The maximum term of imprisonment will be increased to 10 years.

The maximum penalty for a corporation will be the higher of:

45,000 penalty units (currently \$4.95 million);

three times the benefit attributable to the breach; or

10 per cent of the corporation's annual turnover during the applicable period.

The bill also clarifies how the fault elements of the offence of creating a false or misleading appearance of active trading operate, in accordance with the requirements of the Criminal Code.

Improved Offence Detection Powers

The bill also proposes to include the insider trading and market misconduct provisions in part 7.10 of the Corporations Act in the list of serious offences in section 5D of the Telecommunications (Interception and Access) Act 1979.

Insider trading and other market offences are difficult to investigate, as these offences by their very nature involve complex networks of people, technological sophistication and avoidance of paper and traceable communications. In addition, the transactions often occur in real time, meaning that telephone conversations are often the only evidence of the offence.

This bill enables interception agencies, such as the Australian Federal Police, to obtain direct evidence of these offences—such as the content of conversations—rather than simply relying on circumstantial

evidence, such as the mere existence of suspicious telephone calls.

The bill also amends the search warrant power in the Australian Securities and Investments Commission Act to permit ASIC to apply for a search warrant without first having to issue a notice to produce for the material sought by the warrant. The current legal requirement to issue such a notice provides those under investigation with an opportunity to destroy incriminating material.

Minco Approval

The Ministerial Council for Corporations has been consulted and has approved the amendments contained in this bill.

I commend the bill to the House.