



Stronger ASIC powers to pursue market misconduct

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On 28 January 2010, Chris Bowen, Minister for Financial Services, Superannuation and Corporate Law, announced proposed changes designed to strengthen Australia's laws in relation to market misconduct and insider trading. The proposed reforms will provide the Australian Securities and Investments Commission (ASIC) with greater powers to investigate market misconduct and insider trading under Part 7.10 of the *Corporations Act 2001* (Cth) (Corporations Act) and will significantly increase the penalties for insider trading.

Increased investigative powers

In response to petitioning by ASIC for greater investigative powers, the Government has proposed changes to the *Telecommunications (Interception and Access) Act 1979* (TIA Act) which will allow ASIC to intercept telephone and electronic communications of corporations and their officers who are suspected of insider trading.

Under the proposed regime, ASIC may be able to obtain clear evidence of activities that have occurred within a corporation, such as the exact content and nature of telephone conversations, rather than simply relying on circumstantial evidence that a conversation may have occurred.

Increased penalties for market misconduct

The Government believes that the current penalties under the Corporations Act do not sufficiently deter companies and their officers from engaging in market misconduct and insider trading. The Government has therefore proposed that the pecuniary penalty for individuals be increased from the current maximum of

\$22,000 (or \$220,000 for insider trading) to the greater of:

- \$500,000, or
- three times the profit made or loss avoided by the conduct that constitutes the offence, and/or
- a maximum jail term of ten years imprisonment.

The maximum penalty for a corporation would be increased from the current maximum of \$1 million to the greater of:

- \$5 million
- three times the profit made or loss avoided, or
- 10 per cent of the annual turnover of the corporation in the relevant period.

Conclusion

By increasing the penalties applicable to these offences, and the powers to investigate and prosecute them, the Government hopes to send a strong message to the Australian business community and deter market misconduct and insider trading.

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