

Government response to the Parliamentary Joint Committee on Corporations and Financial Services' Report on the 2014-2015 annual reports of bodies established under the ASIC Act

Recommendation 1

The Government supports this recommendation in principle.

Under subsection 631(2)(b) of the *Corporations Act 2001* (Act), a person must not publicly propose to make a takeover bid if they are reckless as to whether they would be able to fund a substantial proportion of the offers under the bid. This is an important market integrity provision which recognises that the announcement of a takeover bid will often have a significant effect on the market for target securities even before offers are made.

The Federal Court recently held in *Australian Securities and Investments Commission v Mariner Corp Ltd* [2015] FCA 589 that the test for 'recklessness' in s 631(2)(b) of the Act is a subjective test, not an objective test. This conflicts with the objective test outlined in the Takeovers Panel's *Guidance Note 14: Funding Arrangements*, which states that a takeover bid gives rise to unacceptable circumstances if the bidder does not have a **reasonable basis** to expect that it will have funding in place to pay for **all** acceptances.

Further consideration of this recommendation will occur when other substantial reforms to takeover laws are next considered by the Government.

Recommendation 2

The Government notes this recommendation.

The Financial Advisers Register (Register) was launched by the Australian Securities and Investments Commission in March 2015. Its purpose is to enable consumers to verify the credentials of financial advisers, including whether they have been banned or disqualified from being financial advisers.

The Register only contains information about financial advisers who were practising on or after 31 March 2015.

Consumers seeking financial advice are able to verify that a person is not authorised to provide financial advice by the fact that they do not appear on the Register.

The Register will accumulate information about advisers who have been banned or disqualified after 31 March 2015 over time. Consumers can obtain information about banned advisers who ceased practising prior to 31 March 2015 by checking the banned and disqualified register.