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## **Proposed reforms do not encourage good corporate governance**

The Federal Government's proposal to overturn the High Court's *Sons of Gwalia* decision is a victory for powerful financial institutions at the expense of everyday shareholders, according to national law firm Slater & Gordon.

Slater & Gordon commercial lawyer Ben Phi said the changes being proposed by the Federal Government undermined the current system.

"Shareholders rely on a listed company's compliance with its continuous disclosure obligations when making investment decisions. It is a regime that is vital to market confidence and which has helped establish Australia as the financial centre that it is," Mr Phi said.

"The government proposes to overturn a law that only applies in limited circumstances - namely, to protect shareholders who can prove that the company they invested in had misled them.

"When investing, shareholders assume many risks that trade creditors do not in exchange for the rights and benefits that accompany their ownership stake. But this should not include the risk of insolvency caused by a company's fraud or its failure to disclose price-sensitive information."

Mr Phi said the government's proposed changes would not encourage lenders to adopt best practice.

"The High Court's decision ought to have encouraged financial institutions to tighten their lending criteria and assess the risk posed by weak corporate governance policies and structures. They could have joined the fight to encourage listed companies to adopt best practice in their market disclosure.

"Instead the government's proposed reform relieves this pressure, while also undermining the continuous disclosure regime that underpins investor confidence in the Australian equities market."

Mr Phi said overturning the *Sons of Gwalia* decision would not mean a return to the status quo.

"The High Court merely clarified the law as it was, confirming that people with legal claims against a company in administration are able to prove as unsecured creditors in respect of the losses alleged to have been suffered.

"The decision exposed a false premise that had underpinned commercial lending, and exposed many lenders to risk that they had failed to account for. The government has chosen to protect banks at the expense of shareholders rights."

### **Media inquiries**

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