

RULE OF LAW

INSTITUTE OF AUSTRALIA

8 November 2010

Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email to: economics.sen@aph.gov.au

Dear Committee Secretary

SUPPLEMENTARY SUBMISSION –CORPORATIONS AMENDMENT (NO. 1) BILL 2010

The Rule of Law Institute of Australia (RoLIA) has prepared a supplementary submission on the above Bill in response to information which has come to light at the public hearing on 3 November 2010.

RoLIA understands that, at the public hearing, ASIC conceded that the purpose of the expansion of its search warrant power in items 1 to 3 of the Bill is solely for circumstances in which ASIC suspects documents will be destroyed.

Section 67 of the *Australian Securities and Investments Commission Act 2001* (“ASIC Act”) makes it an offence for any person or corporation to conceal, destroy, mutilate or alter a document relating to a matter that ASIC is investigating or is about to investigate.

In circumstances where ASIC reasonably suspects that destruction of the relevant material will occur it would be entitled to obtain a search warrant under section 3E of the *Crimes Act 1914* for such material. That power is already available to ASIC. No prior notice to the person or corporation concerned is necessary before the power is exercised.

In those circumstances there is no need for ASIC's search warrant power to be expanded. Even were it necessary to expand ASIC's powers as suggested by ASIC, the Bill should be limited to circumstances in which ASIC reasonably suspects that documents are likely to be destroyed, and the magistrate granting the warrant should be required to be satisfied of that matter.

ASIC also seemed to suggest that caselaw concerning search warrants would apply to the proposed new power, so that ASIC would be required to convince the magistrate that it had a reasonable suspicion of the commission of an offence or a civil contravention. That is incorrect, because the proposed new search warrant power is drafted substantially wider than ordinary search warrant powers. A magistrate would not be entitled to consider whether there had been a contravention of the legislation. As a result, ASIC would be entitled to execute search warrants against persons it believed to be innocent of any contravention.

Having regard to the above matters, RoLIA stands by the written and oral submissions it has already made to the Committee.

Yours sincerely

Malcolm Stewart
Vice-President