

Submission to the Senate Standing Committee on Economics concerning the Corporations Law Amendment Bill No. 1 2010

The New South Wales Council for Civil Liberties thanks the Senate Committee for the opportunity to make a submission in relation to this bill.

The New South Wales Council for Civil Liberties (CCL) is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is a non-government organisation in special consultative status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

CCL was established in 1963, and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive use of power by the State against its people.

1. Improper uses of share register information.

CCL welcomes the proposal to determine by legislation what counts as improper uses of share register information. The proposed regulations must balance the right of privacy of the shareholders with strong competing public interests. For example, it is desirable that the public can be made aware of the extent of the power of some individuals or groups, or that an individual who makes a strong public stand on an issue has a financial interest in doing so.

We have read the submission of the Law Council of Australia on this matter, and agree with them in particular about the capacity the proposed legislation creates for delay. Amongst other things, allowing a corporation to decide what is an improper purpose would allow its management potentially to defend their own interests (e.g. during a hostile takeover when time is of the essence). This creates intolerable conflicts of interests.

Rather than have company officials decide that a purpose is improper under the regulations, it would be better, in our opinion, for the decision to be made in the first instance by an independent arbiter, with a judicial review available.

2. Imprisonment for use of share registers for improper purposes.

CCL is opposed in general to the existence of strict liability offences, and in particular to the use of imprisonment for them. We welcome therefore the removal of this option for sentencing in this case.

3. The inclusion of insider trading and market manipulation in the list of serious offences (Section 5D of the Telecommunications (Interception and Access) Act—the TIA Act)).



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It is alarming to observe the extent of function creep of powers, originally justified in relation to terrorist offences and those that threaten life or serious bodily harm, to lesser crimes. The proposed change would permit the full range of warrants to be issued to interception agencies, for offences concerning insider trading and market manipulation. It is paradoxical for a bill which seeks to protect the privacy of shareholders in one respect to then allow such intrusions. CCL shares the concern raised in their submission by the Rule of Law Institute on this matter.

Since under paragraph 5D(2)(a) of the TIA Act any crime punishable by 7 years imprisonment is a serious offence, the increase in penalty proposed in the bill will itself make these powers available to interception agencies. Rather than permitting this, the bill should be amended to limit the powers granted.

4. The change in requirements for ASIC to obtain a search warrant.

Law enforcement agencies are required to report to the relevant Attorney General and to Parliament the numbers of interception warrants applied for and executed each year, and on the success of those actions in obtaining evidence (and in some cases, securing convictions). The following, from New South Wales law, is a typical example:

- (3) The [annual] report is to specify the following matters in relation to the year ended on that 30 June:
- (a) the number of applications for covert search warrants made under this Part and the number of those applications granted,
 - (b) the number of applications for telephone warrants and the number of those applications granted,
 - (c) the number of covert search warrants executed,
 - (d) the number of covert search warrants under which any things were seized,
 - (e) the number of covert search warrants under which any things were placed in substitution for seized things,
 - (f) the number of covert search warrants under which any things were returned or retrieved,
 - (g) the number of covert search warrants under which any things were copied, photographed or otherwise recorded,
 - (h) the number of covert search warrants under which any electronic equipment was operated by eligible police officers or eligible staff members of the Crime Commission,
 - (i) the number of covert search warrants under which any things were tested,
 - (j) the number of arrests made in connection with a terrorist act in respect of which a covert search warrant was executed and the number of those arrests that have led to the laying of charges in relation to the terrorist act,
 - (k) the number of complaints that are made under any Act about conduct relating to the execution of a covert search warrant by an eligible police officer or an eligible staff member of the Crime

Commission and the number of those complaints that are, or have been, the subject of an investigation under any Act,

(1) any other matters requested by the Police Minister or the Attorney General.

(4) The reports may be combined with any other annual report of the NSW Police Force or the New South Wales Crime Commission.

(5) The reports are to be tabled in each House of Parliament as soon as practicable after they are received by the Attorney General.¹

It is the view of CCL that similar reporting requirements, at least, should be placed upon ASIC's search powers. ASIC's search powers should not be expanded until the requirements are imposed.

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¹ Terrorism (Police Powers) Act 2002, NSW.