

Additional comments from Coalition Senators

Coalition Senators generally agree with the substance of the Chair's report.

The Bill's proposed changes to the Corporations Act are designed to make it more difficult for persons to acquire companies' share registries for 'improper purposes'. These changes are intended to limit the occurrence of 'predatory' or unsolicited off-market share offers, which can damage the financial position of vulnerable shareholders.

The proposed changes appear to strike a sensible balance between the rights of shareholders to privacy and the rights of the public to acquire information about the owners of publicly traded companies. Scope remains for judicial review in cases where share registries are in fact withheld. As noted in the Chair's report, some stakeholders raised as a concern the potential for delays in accessing the register for proper purposes where the company, acting as the 'gatekeeper', chose not to act immediately in assessing whether the purpose is proper and then supplying access to the register. This concern acknowledges the fact that not all purposes whereby a party seeks to obtain access to the register, that are legal and proper, are welcome by the company concerned. A close examination of practices employed if the Bill becomes law would be warranted in this regard.

The Bill will also establish higher penalties for insider trading and market misconduct offences. It will appropriately expand the list of serious offences in the Telecommunications Interception Act. These measures are designed to mitigate illegal activity and aid ASIC in its prosecution.

Nevertheless, Coalition Senators remain concerned about the additional search warrant powers the bill proposes to give to ASIC. The Chair's recommendation that if ASIC gains new search warrant and telecommunications interception powers that it publish the number of times it uses them is a welcome addition, but even so, might not be a sufficient safeguard.

Coalition Senators concede that cases might arise where ASIC's existing powers are insufficient to deter or detect corporate malfeasance. But it is not clear that the proposed powers will be subject to appropriate scrutiny or oversight.

Evidence was provided that the terms under which this power is granted under the bill do not require an appropriate judicial officer to consider the full range of issues normally considered as part of a determination whether to grant such a warrant. Indeed, it was suggested that all a judicial officer needed to be satisfied of is that the subject premises contains documents and that the officer would then be obliged to issue the warrant. Contrary evidence was received which suggested this not to be the case. Coalition Senators are not satisfied that this issue was resolved and consider that steps should be taken to ensure that any new search warrant power as proposed in this

bill, is subject to the normal checks and balances that would be applied to the issuance of search warrants in Australia.

Further, the issue of whether ASIC's new powers would be subject to the constraints in section 28 of the ASIC Act was subject to contrary evidence and this needs to be clarified.

At a minimum, the existing bill needs to be better and more clearly drafted. The Coalition reserves the right to amend this bill in the Senate.

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Western Australia, LP