

21 July 2017

Our ref: NDC - CrLC

Dr Natasha Molt
Senior Legal Adviser
Law Council of Australia
19 Torrens Street
BRADDON ACT 2612

By post and by email: natahsa.molt@lawcouncil.asn.au

Dear Dr Molt

Harmonisation and Enhancement of Search Warrant Powers

Thank you for the opportunity to provide comments on the Harmonisation and Enhancement of Search Warrant Powers. The Queensland Law Society appreciates being consulted on this important issue.

We address specific issues raised in the consultation paper below:

Consolidation of ASIC-specific search warrant powers

The Society supports the position that ASIC-specific search warrant powers, currently in various Act, be consolidated into the ASIC Act. This will provide for greater consistency in the way search warrant powers available to ASIC operate.

Search and seizure of 'evidential material'

The Society supports the position that ASIC Act search warrants provide for search and seizure of 'evidential material'. Under the *Crimes Act 1914* (Cth), 'evidential material' has a specific meaning and includes material in electronic form. Under the *Crimes Act 1914* (Cth), a search warrant may be issued if there are reasonable grounds for suspecting that there is, or will be within the next 72 hours, any evidential material at the premises. Provision for the search and seizure of evidential material under ASIC-Act search warrants will assist in improving consistency across various search warrant powers.

Threshold for applying for an ASIC Act search warrant

The Society supports the position that a search warrant only be issued under the ASIC Act where there is a reasonable suspicion of contravention of an indictable offence. This is an appropriate threshold for the issuing of a search warrant and ensures that search warrants are only issued in the course of investigating serious offences.

Harmonisation and Enhancement of Search Warrant Powers

Ancillary powers

The Society supports ancillary powers being included in the search warrant powers under the ASIC Act. In our view, these ancillary powers should mirror the provision of the *Crimes Act 1914* (Cth).

Material seized under ASIC Act search warrants

The Society supports the position that material seized under ASIC Act search warrants should be available for use in criminal, civil and administrative proceedings. However, in relation to civil and administrative proceedings, material seized under ASIC Act search warrants should only be available for use where the proceedings were commenced by ASIC.

Third party access to seized material

The Society does not support the position that private litigants should be able to use material seized under search warrant. Search warrants powers must carefully balance the need to investigate indictable crimes against maintaining protections for individual rights and freedoms. Allowing third party access to seized material is significantly broader than powers provided under section 3ZQU of the *Crimes Act 1914* (Cth) and falls beyond the scope of the intention of the search warrant. Further, once material is provided to private litigants, ASIC no longer retains control over that material.

Private litigants may seek relevant material through existing UCPR processes and, for example, through Anton Pillar orders.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Natalie de Campo on 3842 5889 or N.DeCampo@qls.com.au.

Yours faithfully



Christine Smyth
President