Preventing Shell Games – Requiring the disclosure of corporation owners

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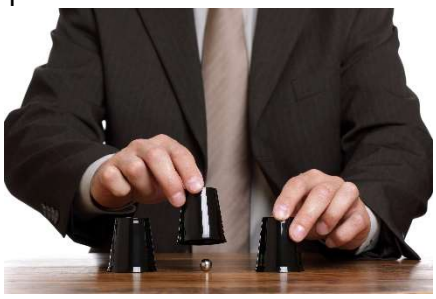
Better is a poor man who walks in his integrity than a rich man who is crooked in his ways.
Proverbs 28:6

Everyone who does evil hates the light, and will not come into the light for fear that their deeds will be exposed.
John 3:20

Throughout the Bible, there are calls for people to act with integrity and to treat the socially less powerful justly. Unfortunately, at times, Australia has provided a haven for the assets of political leaders and business people in developing countries involved in gross human rights abuses or grand corruption. The ability to shift stolen funds into Australia from developing countries is often facilitated by using corporations and trusts where the real owners are concealed. Concealing the real owners of corporations and trusts makes it much harder for police to detect the criminal nature of funds being transferred. The new Commonwealth Government has publicly acknowledged the ability to conceal beneficial ownership of companies and trusts can be used to facilitate tax evasion, money laundering, the by-passing of international sanctions and conceal the ownership of stolen assets. These are modern examples of the gospel's indictment that people who do "evil hate the light, and will not come into the light for fear that their deeds will be exposed."

The Commonwealth Government promised to introduce a register that would disclose the real owners of corporations. However, Australia currently lags behind much of the rest of the world regarding disclosure of the beneficial ownership of corporations.



In 2018, 34 governments had laws establishing beneficial ownership registries. That increased to 80 by 2020 and 97 by 2022.

Research from 2012 found that Australian businesses that assist in setting up corporations were near the top of firms willing to set up untraceable shell companies even when there was a significant risk the company in question would be used for illicit purposes. Shell companies do no real business but provide a legal shield to conceal the people behind the company.

Using a trust for wage theft – An example of how concealed ownership facilitates actual harm

Marco worked as a waiter in a restaurant. He was paid a flat rate per hour, well below the minimum rate, on a cash-in-hand basis, including for work done on weekends, Christmas Day and other public holidays. He decided to get legal advice because he wasn't paid for his last few shifts. When JobWatch asked him who his employer was, he gave us his boss' first name, the trading name of the restaurant and the boss' mobile phone number. JobWatch sent a letter of demand addressed to the business. It was returned to the sender, and Marco subsequently instructed us that the firm had closed down. We later discovered that the holder of the trading name was the trustee of a trust. Unfortunately, Marco had no way of establishing who the trustee was or what their address for service was. Accordingly, he couldn't properly identify the correct legal entity as his employer in court proceedings. Even if he had a name, he couldn't properly serve the court documents on the respondent.

Case study provided by JobWatch

Unfortunately, the initial phase of disclosing beneficial owners of companies put forward by the Commonwealth Government is very weak. The people running a corporation will be required to self-disclose anyone who owns 20% or more of the shares or mechanism of control in the company. Such a measure may help detect cases where people involved in criminal activity have bought a significant shareholding in a corporation run by honest people. However, where the corporation is set up by people who are knowingly assisting the criminals behind the company, they will not self-disclose the criminals who own and control it.

The critical measure that must be included in the design of a beneficial ownership register is that a person acting as a nominee or front for a beneficial owner must face severe penalties for failing to disclose that they are acting as a nominee or front. Often people who act as nominees or fronts for beneficial criminal owners are chosen because they do not have a criminal record and have no involvement in the illegal activity the corporation or trust is being used for. Thus, facing severe sanctions for acting as a nominee or front for a beneficial owner and not disclosing the fact creates a deterrent to playing such a role. It should make it harder for criminals to find people to act as nominees or fronts to conceal their ownership and control.

There needs to be a regulator that conducts audits of the identity information for declared beneficial owners as a deterrent against providing fraudulent identity documents for a supposed beneficial owner.

What you can do
Write polite and respectful letters to:

The Hon Jim Chalmers MP
Treasurer
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Salutation: Dear Treasurer

The Hon Dr Andrew Leigh MP
Assistant Minister for Competition, Charities and Treasury
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Salutation: Dear Minister

Points to make in your letter:

- Thank the Commonwealth Government for consulting on measures to require the public disclosure of the real owners of corporations.
- Express concern that the current proposal will be ineffective in forcing the disclosure of beneficial owners of corporations.
- Ask that the ownership threshold at which a beneficial owner has to be disclosed be lowered from 20% to 5%.
- Further, ask that there will be severe penalties for people who act as a front or nominee for the actual owner of a corporation and do not disclose who the real owner is.
- Seek their assurance that the proposed beneficial ownership register will ultimately:
    - Be a central register that will be searchable; and,
    - Include trusts.