

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates 2012

15 – 17 February 2012

Question: AET 1227

Topic: Asset sales of a privateer who is not in a company, does he or she still come under section 420A?

Hansard Page: 104

Senator Williams asked:

If a receiver or a liquidator sells an asset of a privateer who is not in a company, does he or she still come under section 420A—when they are selling a business owned by, say, a man and his wife and they are not a company, they are a partnership—or does it just cover company assets?

Mr Day: Without the act in front of me I would not be able to answer that. I would need to take that on notice.

Answer

Section 420A of the Corporations Act only applies to controllers of companies and the process of sale of property of those companies. It does not apply to the realisation of assets of non corporate entities.

Trustees in Bankruptcy are bound by the terms of the Bankruptcy Act 1966. Trustees in Bankruptcy are bound by Section 19 of the Bankruptcy Act which requires, inter alia, that they take appropriate steps to recover property and to exercise their powers and functions in a commercially sound way.

Further, Division 2.3 of Schedule 4A of the Bankruptcy Act sets out performance standards for Trustees when exercising their powers of sale over property which are similar to the requirements of Section 420A of the Corporations Act.

Receivers of property of individuals are also bound by the relevant terms of State-based legislation regarding the realisation of real property.