

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

Question: SBT 195

Topic: Corporations law amendment

Senator Coonan asked:

Senator COONAN—I have a very brief point that I want to raise with you about the corporations law amendment enhancing asset search warrant capacity without first issuing a notice to produce and also enabling an interception agencies such as the AFP to apply for interception warrants in the course of a joint investigation relating to insider trading. The point I am about to make will no doubt come up in the scrutiny of bills examination of the legislation and possibly in debate, but I just wanted to flag it here. It might require some thought in the meantime, unless I have not understood something about the bill.

ASIC's powers in division 3 to apply for a search warrant provide in effect that it should be exercisable for 'proper purposes' in connection with ASIC's statutory functions. Yet it does not seem that in the current bill that we will shortly be considering that the exercise of the powers will be subject to specified safeguards with reference to the purpose for which the power is being exercised. In other words, there is no reference to particular seriousness. I heard Ms Gibson's point earlier about indictable offences, which might be the answer, but it certainly is not very clear. Do you have any comment about that?

Ms Gibson—I think the term 'proper purpose' appears in many pieces of legislation. It intones in common law motions of the right intent and so on. I cannot comment specifically on the legislation but I think 'proper purpose' brings with it a lot of common law as to what that is, which is perhaps the protection that would otherwise be built in.

Senator COONAN—I just wonder about that because, for example, I had a look at the New South Wales Law Enforcement (Powers and Responsibilities) Act where it actually defines 'searchable offences' in relation to a warrant to mean an indictable offence and various other things. But there is certainly a definition that it must be serious. This appears to just be at-large. I think there is a real issue as to whether that is potentially an infringement on personal liberties et cetera that will be raised as part of the scrutiny of the legislation. I think it would be certainly worth limiting ASIC's powers or specifying that the powers be confined to seeking a search warrant for investigations of particular seriousness. Perhaps there should be some collaboration about that, because it is potentially very coercive.

Ms Gibson—I think I will leave that for government.

Senator Sherry—The detail of the legislation is a policy matter. I think I can anticipate a letter—not to me but to my colleague, who I think is Mr Bradbury in this case.

Senator COONAN—This constant changing means there are a lot of people to write to.

Senator Sherry—It is a consequence of being re-elected—which is a nice place to be I might say. I will take it on notice and let—

Senator COONAN—I thought it was worth alerting you to it, particularly given the generic discussion we have just had on coercive powers. This is a particular legislative case in point where I think it does arise.

Senator Sherry—Okay, thanks.

Answer:

The new search warrant power to be included in the ASIC Act (proposed new s35(1)) is only available in situations where ASIC would otherwise be able to serve a notice to produce documents. Those situations are set out in s28 of the ASIC Act. Search warrants require approval by a magistrate after information is provided on oath – this is a significant protection attaching to the circumstances in which ASIC may use this power.

In relation to the ability to apply for telecommunications interception warrants, an interception agency may only apply where a serious offence has been committed. The definition of serious offence will be amended to include provisions of the Corporations Act that cover insider trading and other market manipulation offences.

ENDS

9/12/2010 4:09:00 PM

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