

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates 3-5 June 2008

**Question: bet 87**

**Topic: Fuel Watch - Operations**

**Hansard Page: E90**

**Senator Coonan asked:**

**Senator COONAN**—Certainly. That is more than reasonable. Once again I apologise to them. I am sure they are watching or listening. I wanted to go to a few questions about the operation of the scheme and the analysis. First of all, there have been some questions as to the constitutionality of using the corporations power and insofar as it would bind sole traders or individual operators. No doubt this is a matter of legitimate public interest. I am going to ask the officials or the minister whether or not you would consider releasing the legal advice, or whatever series of legal advices that have been committed to writing, so that we could have confidence more broadly that this scheme is constitutional?

**Senator Sherry**—I will take that on notice.

**Senator COONAN**—Thank you.

**Mr Murphy**—If you looked at recent High Court cases the extent of the corporations power is fairly clear.

**Senator COONAN**—I understand that. Therefore, there should not be much problem in confirming it and I think that would be appropriate. I know that there are occasions where it is not appropriate to release legal advice, but if it is not much of an issue and it has been well and truly canvassed, which you say it has, we will look forward to—

**Senator Sherry**—I will take your request on notice. I am just trying to think when you released legal advice as a minister. I am just trying to cast my mind back.

Anyway, I will take it on notice.

**Senator ABETZ**—I am sure you were highly critical.

**Senator COONAN**—If it is not contentious or is fairly straightforward, as Mr Murphy says, perhaps some of the usual caveats about releasing legal advice might be overcome.

**Answer:**

The Assistant Treasurer and Minister for Competition Policy and Consumer Affairs has advised, as follows:

“The advice from the Australian Government Solicitor is that FuelWatch can be implemented on the basis of the corporation’s power under the Constitution.

The legal advice outlined that the corporation’s power is not restricted to laws addressed to constitutional corporations.

It’s a long standing practice for all governments not to release legal advice – as the former Attorney General, Phillip Ruddock, put so eloquently to the House of Representatives on the 29<sup>th</sup> March 2004

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*“It is not the practice of the Attorney to comment on matters of legal advice to the government. Any advice given, if it is given, is given to the government.” ”*