

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 14 – 15 February 2007

Question: **aet 127**

Topic: **James Hardie - Government Intentions**

Hansard Page: **E80**

Senator WONG asked:

Is the government intending to ensure that James Hardie, the Dutch company, cannot provide an indemnity to the officers who are currently under ASIC proceedings?

Senator Minchin—Mr Cooper has taken that issue on notice in relation to—

Senator WONG—No, I am asking the minister.

Senator Minchin—I am not the minister responsible. ASIC has taken that question on notice. I am happy to have a look at their answer and come back to you.

CHAIR—This is a jurisdictional issue potentially as much as anything else, and I do not whether Mr Cooper can—

Senator WONG—But that is—

Senator Minchin—Mr Cooper took the previous question on notice about the issue of that section and its implication or otherwise to a Dutch registered company.

CHAIR—Yes, that has been taken on notice.

Senator WONG—I am not asking the question as to whether it is possible et cetera. I am asking whether it is the government's intention to do all that it can to ensure that the Dutch registered James Hardie corporate entity does not provide an indemnity to those persons who are the subject of these ASIC proceedings.

Senator Minchin—I would not want to give an answer to that on the run. I am happy to get you an answer.

Answer:

Section 199A of the *Corporations Act 2001* (Corporations Act) contains rules in relation to companies providing indemnities for liabilities or legal costs to company directors and officers.

Section 199A prohibits a company or related body corporate indemnifying a person against any of the following liabilities incurred as an officer or auditor of the company:

- a liability owed to the company or a related body corporate;
- a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H or 1317HA;

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- a liability that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith.

In addition, a company or related body corporate is prohibited from indemnifying a person against legal costs incurred in defending any proceedings in which the person is found to have a liability.

To the extent that an indemnity purports to indemnify a person against a liability in contravention of section 199A, section 199C provides that it is void.