

# **Senate Standing Committee on Economics**

## **ANSWERS TO QUESTIONS ON NOTICE**

### **Treasury Portfolio**

Additional Estimates 14 – 15 February 2007

**Question:**                    **aet130 (ASIC)**

**Topic:**                      **Affordable Cairns Pty Ltd**

**Hansard Page:**        **E84**

**Senator SHERRY asked:**

I raised with the tax office a superannuation guarantee enforcement issue, so obviously it is not your area. It concerned a business by the name of Affordable Cairns Pty Ltd where the company apparently has basically no assets but net debts of approximately \$180,000, of which \$100,000 relates to superannuation guarantee contributions. That is an issue that the tax office will pursue. It does raise the issue that I would request ASIC to examine and investigate, and that is the duties of the directors in relation to compulsory super contributions. There was the notification on pay slips that moneys were paid but actually failed to remit. I would like to know whether that constitutes a fraud and whether employees have any avenues of redress against the directors for possible breach of their duties and obligations. Prima facie at least, given the size of the debt and the withholding of the superannuation guarantee contributions over a long period of time, there is the issue of possibly trading while insolvent. There are some aspects here, I think, for ASIC to examine.

**Mr Cooper**—We will take that on notice.

**Answer:**

The recording of deductions on a pay slip generally occurs in the day-to-day operations of a business. The amounts noted on each pay slip as withheld would in ordinary events be recorded as a liability of the company. In this case this would normally include creditors such as the ATO and various superannuation funds. The timing of payments of these amounts to those creditors varies and their discharge would also be dependent upon the cashflow capacity of the business at a particular point in time. At some point when the debts accumulate and are not paid, questions about the directors potentially breaching their duties and the extent of their personal liability arise. Amongst others, this could trigger the insolvent trading provisions and the directors' duties provisions of the *Corporations Act*. In this case the liquidator of the company would investigate the circumstances of the corporate failure and report any alleged offences to ASIC pursuant to section 533 of the *Corporations Act*. If as a result ASIC commenced a formal investigation into such alleged conduct, it would obtain the facts of all the circumstances surrounding the directors conduct and then be able to form a definitive view.