

**Australian Government
Treasury**

ASIC/ATO INFORMATION SHARING

Submission by Professor Helen Anderson and Professor Ian Ramsay, Melbourne Law School and Professor Michelle Welsh, Department of Business Law and Taxation, Monash University.

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We thank Treasury for this opportunity to make a submission regarding the Treasury Laws Amendment (2017 Measures no #) Bill 2017. We are a group of academics currently undertaking an Australian Research Council-funded project examining the regulation of illegal phoenix activity. Our aim is to devise ways in which this damaging behaviour can be most efficiently and effectively prevented and deterred, without damaging legitimate business activities to the detriment of the economy. We have produced two majors, the first entitled *Defining and Profiling Phoenix Activity* (December 2014) and the second *Quantifying Phoenix Activity: Incidence, Cost and Enforcement* (October 2015), which are available from: <http://law.unimelb.edu.au/cclsr/centre-activities/research/major-research-projects/regulating-fraudulent-phoenix-activity>. We expect to release our final report, which will be entitled *Phoenix Activity: Problems and Recommendations*, at the end of February 2017.

We strongly endorse the amendment which the Bill will introduce. Illegal phoenix activity can be disrupted and prosecuted most effectively with full cooperation between regulators, and this cooperation is underpinned by the sharing of information. The amendment is also in line with a recommendation of the 2015 Senate Economic References Committee (SERC) Construction Insolvency Report, that ‘consideration be given to amending confidentiality requirements in statutory frameworks of agencies participating in the Phoenix Taskforce to permit dissemination of relevant information to the ATO.’¹ The Coalition Senators' Additional Comments at the end of that report also noted that:

As these agencies are characterised by a diversity of aims, powers and responsibilities, any changes to the operation of the Taskforce, including the changes to confidentiality requirements outlined in Recommendation 12, would need to be considered by all the relevant agencies and would take time to resolve.²

We urge Treasury to build upon the SERC’s recommendation by widening the sharing of confidential information amongst other members of the ATO’s Phoenix Taskforce.

We also take this opportunity to stress the importance of designing information sharing mechanisms for *non*-confidential information. A great deal of information about companies and their controllers is gathered by ASIC and is either available from its website without charge or may be purchased. Regulators tasked with enforcing tax, employment and consumer protection laws, amongst others, would benefit enormously from freer and more timely flows of information.

¹ Senate Economic References Committee, ‘I just want to be paid’ Insolvency in the Australian construction industry (Commonwealth of Australia, December 2015), [5.84], recommendation 12.

² Ibid 197.

We refer Treasury to a relevant publication by one of our researchers,³ and we would be pleased to discuss these matters further with you.

³ Helen Anderson, 'Sunlight As The Disinfectant For Phoenix Activity' (2016) 34 *Company and Securities Law Journal* 257.