

## Dob in a dodgy director: what more is needed in the Government's arsenal?

The ATO's new whistle-blower hotline is the latest in the Federal Government's arsenal in the war on illegal phoenixing, which is estimated to be costing the Australian economy up to \$5.13 billion each year.

Scalps have already been claimed, [as we reported last month](#). Last financial year, the ATO issued tax bills totalling more than \$270-million resulting from over 340 reviews and audits of businesses involved in illegal phoenix activity. From July 2017 to March 2018, there have been seven criminal prosecutions, with a further 34 individuals disqualified. Enforcement action has also been taken against registered liquidators who have assisted phoenix companies.



Trent Devine

The new hotline has been created to enable individuals to discretely report companies that may be liquidating with the view to creating a new 'phoenix' entity to avoid paying debts. The hotline is viewed by the government as a vital protection tool for workers, suppliers, customers and investors.

However, Jirsch Sutherland Partner Trent Devine is concerned the hotline may fail to generate the type of accurate and detailed information required for legal action.

"There are certainly merits to the hotline being available and we feel an added layer would be to enable greater collaboration with insolvency practitioners, who can provide transparency into the company's or directors' affairs," Trent says.

"The way the hotline is currently set up allows a trade creditor, disgruntled employee or member of the wider business community – who may not be informed of the complete financial circumstances – to contact the ATO. Consequently, the ATO may not get all the facts and information on a company's position."



Indeed, Trent says the insolvency industry constitutes an even greater source of information than the whistle-blower hotline in its current guise.

“When it comes to cases involving illegal phoenixing, liquidators can provide strong insight,” he says. “By taking a more collaborative approach with the liquidators that are in control of a company, the ATO would get a better quality of feedback and information, and therefore have a better opportunity to pursue any illegal phoenixing activities.

“It would be great to see ASIC and the ATO working proactively with liquidators to ensure sufficient funding is available for liquidators to undertake these further investigations into alleged phoenixing activity. To this end, the requirement for Director Identification Numbers and free access to publicly available databases for liquidators would significantly improve the regulatory environment for liquidators in dealing with phoenixing activity.”

When it comes to any potential future collaboration between the liquidation community and the ATO, Trent believes there is still time for a change in the government’s mindset and approach. “I certainly think there is, but any such decision to change approach will come down to the results that the hotline is getting in the medium-term.”

The hotline can be called on 1800 807 875 or information can be submitted online via the [ATO website](#).