

**Economics References Committee**

**Inquiry into insolvency in the Australian construction industry**

**ANSWERS TO QUESTIONS ON NOTICE**

**Australian Taxation Office**

28 September 2015

**Department/Agency:** ATO

**Question:** 1-3

**Topic:** Inter-Agency Phoenix Forum

**Reference:** Hansard - page 21, page 22

**Question:**

**Senator CAMERON:** How many times has the Inter-Agency Phoenix Forum met?

**Mr Cranston:** It currently now involves 17 agencies. When it started, it did not have that same amount of agencies. It started in 2012. We meet quarterly. As I said, it is now up to 17 agencies.

**Senator CAMERON:** So representatives of 17 agencies sit around a table or do a telephone hook-up? How does it work?

**Mr Collins:** There have been a mixture of video conferences recently, and physical meetings. Every second meeting is physical.

**Senator CAMERON:** It is meeting once a month?

**Mr Collins:** No, once every three to six months. It depends.

**Senator CAMERON:** That is a big gap—three to six months.

**Mr Collins:** We communicate very frequently with the agencies individually in the intervening periods.

**Senator CAMERON:** I am talking about a forum. When you talk about a forum, the public and we get a view that there is somebody sitting around in a forum doing good things—we would hope. So how many times has the forum met?

**Mr Collins:** I would have to take that on notice, but least eight or 10 times.

**Senator CAMERON:** If you could take that notice I would be happy with that. It is operating now?

**Mr Collins:** It is, yes.

...

**Senator CAMERON:** You have got the Phoenix Watchlist. You have this whole-of-government approach. There is the whole-of-government approach with the Fair Work Ombudsman, ASIC, you, and Fair Work Building and Construction. How often does that meet?

**Mr Collins:** It meets through the aegis of the Inter-Agency Phoenix Forum. We have those discussions with those agencies on an ongoing basis. We would probably be talking to ASIC every couple of days and we would probably be talking to the Fair Work Ombudsman every few weeks about specific issues and more general trends in the industry.

**Ms Field:** We meet regularly with ASIC to discuss matters of collection or bankruptcy.

**Senator CAMERON:** What role does the Fair Work Building and Construction commission have in this?

**Mr Collins:** They are members of the Inter-Agency Phoenix Forum and the Phoenix Taskforce. They participate in discussions in terms of those two roles. We also have—

**Senator CAMERON:** So they are on the task force?

**Mr Collins:** Yes. They are also on the Inter-Agency Phoenix Forum and they have also participated in discussions we have had with the head contractors in the building and construction industry, given their regulatory role for the employment side of that industry.

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**Senator CAMERON:** They keep telling me that they do not do any of this anymore.

**Mr Collins:** I cannot comment on what they have told you, but they have in fact—up until the last meeting of the Inter-Agency Phoenix Forum—been participating in the process.

**Senator CAMERON:** At what level do they participate?

**Mr Collins:** I would have to take that on notice. My understanding is that it is at the executive level.

**Senator CAMERON:** Your involvement with the Inter-Agency Phoenix Forum and this whole-of-government approach is at the senior executive level, is it?

**Mr Collins:** At executive and senior executive levels, and at the next level down as well.

**Mr Cranston:** I actually chair the meetings.

**Senator CAMERON:** Could you provide details of the Inter-Agency Phoenix Forum meetings and who is involved in those meetings? I am interested to make sure that everyone who is engaged should be there. They are happening every three to six months?

**Mr Cranston:** Yes.

**Mr Collins:** Yes.

...

**Senator CAMERON:** So it should not be a big job to let us know who was there and when the meetings were held.

**Mr Cranston:** There are formal minutes.

**Mr Collins:** There are formal minutes taken of them and they are published, in fact, on our website.

**Senator CAMERON:** They are published, are they?

**Mr Collins:** The minutes, at an appropriate level, are published. We talk about issues rather than cases, and we talk about the need for joint action to coordinate communication strategies, data collection strategies and joint action strategies.

**Senator CAMERON:** Could you give us a link to that part so we can have a look at what is up there? In your submission, you say that you, 'still remain open to potential legislative reform to better deal with systemic, intentional and deliberate noncompliance by fraudulent phoenix operators.' You must have given some thought to that when you put that submission in. What is the range of legislative reforms that you think would help?

**Mr Collins:** Again, that is probably a question that is best taken up with Treasury in terms of the detail. The identification of potential phoenix operators; the obtaining of information.

#### Answer:

1. The Inter-Agency Phoenix Forum has met thirteen times from 29 June 2011 to 5 August 2015.

2. At the Inter-Agency Phoenix Forum, Fair Work Building and Construction is represented at the Executive Level 2 and the ATO is represented at both the Senior Executive levels and Executive levels.

3. Further information on the Inter-Agency Phoenix Forum can be found at

<https://www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Inter-Agency-Phoenix-Forum/Inter-Agency-Phoenix-Forum/>

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Copies of the Inter-Agency Phoenix Forum minutes can be found at  
<https://www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Inter-Agency-Phoenix-Forum/>

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28 September 2015

**Department/Agency:** ATO

**Question:** 4

**Topic:** ATO definition of red tape

**Reference:** Hansard - page 24

**Question:**

**Ms Field:** I will explain, Senator. From our point of view there are a large percentage of business operators within this industry that do the right thing. They operate and support people within the community. They pay their wages and their superannuation. What we want to be able to ensure as an administrator is that we continue to facilitate that to happen but at the same time be alert and focused and resource areas where we have concern. What we have been doing as an administrator is establish our Phoenix teams, our significant debt management area, that focuses for the small minority that undertake inappropriate behaviour. That is the balance that we are trying to address.

**Senator CAMERON:** But isn't the balance that you have to, if it is a legislative reform and you do not want it to be red tape—

**Ms Field:** No.

**Senator CAMERON:** What is your definition of 'red tape'?

**Ms Field:** For me—my definition of 'red tape'—

**Senator CAMERON:** No, the department's definition, not yours. What is the ATO's definition?

**Ms Field:** I will take it on notice.

**Senator CAMERON:** I think you might have to.

**Mr Cranston:** More recently we have an ability to share information. We have got the watch list and we have got the director penalty notice laws. It will take some time. They are making an impact. We believe we are heading in the right direction with it all. Even before Treasury decide to come up with other laws with government I think they would be very interested in how we are going using those particular tools that are available to us.

**Answer:**

The ATO defines 'red tape' as provided by the Office of Deregulation in *The Australian Government Guide to Regulation*. That is, 'red tape' is a process or other requirement of government perceived to impose an unwelcome burden on business, community organisations or individuals.

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28 September 2015

**Department/Agency: ATO**

**Question: 5**

**Topic: Trust arrangements with industry**

**Reference: Hansard - page 24**

**Question:**

**Senator CAMERON:** Okay. You define 'red tape' and I will define 'huge'! I know you are being serious on this. I understand that you are seriously engaged in this-and- I appreciate that-but it is not much help for those companies who have no security of payment. The issue comes back to security of payment. The proposition that has been put to us is that there should be a trust arrangement within the industry. Have any of these forums discussed the establishment of a compulsory trust system to ensure payments in the industry?

**Mr Collins:** The proposal has been discussed at the Interagency Phoenix Forum as reflecting things that agencies are being told by their stakeholders, so yes, that issue has been discussed.

**Senator CAMERON:** Have you come to a view as to what the implications are for tax revenue if compulsory trusts were there where people could get paid and you knew about the payments? What are the implications for government revenue for a trust type situation?

**Mr Collins:** I do not think the forum actually got down to that level of detail. It was simply raised as an environmental issue in the discussions.

**Senator CAMERON:** 'An environmental issue'?

**Mr Collins:** An environmental issue in the sense that some stakeholders raised that as a potential issue rather than it being a deliberative process to make a decision about whether that should be progressed.

**Senator CAMERON:** Do you have research capacity within the ATO?

**Mr Collins:** We do have research capacity within the ATO.

**Senator CAMERON:** So wouldn't that be something that you would be looking at actively in terms of: 'Here is a proposition that has been put to us in this very important Interagency Phoenix Forum. What are the implications if this were implemented?' You have not done that?

**Mr Collins:** We have not done that. If it were actually canvassed with Treasury then we would provide input at that point.

**Senator CAMERON:** So we are back to Treasury again?

**Mr Collins:** No. We are back to the fact that the government policy process requires a number of different players to be in the room, and you get to a certain point before you start doing the level of detailed research that you just described. If it was a serious proposal that was being canvassed by government, we would look to see what the impacts would be and provide our input through that process.

**Senator CAMERON:** So the ATO is not wholly reactive to government. The ATO does some research. I would have thought any modern government agency, when they know there is a problem, would not wait for the minister to come and say, 'You have to give me a brief on this.' Surely an effective agency would say: 'Here's a problem. Let's do some work on this. It might be rubbish. It might be a good idea.' You don't do that; you are reactive—are you?

**Mr Collins:** No, I would not say that.

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**Mr Cranston:** We often have done research where we think things are going pear-shaped or not going the way we really wanted it to go as an administration agency. However, in this regard, we have not done any research in relation to this aspect about the trustee.

**Senator CAMERON:** Why not?

**Mr Collins:** Because we had other fish to fry, frankly. It was an idea that was floated rather than a serious proposal.

**Senator CAMERON:** So those other fish you had to fry are worth more than \$600 million a year—is that so?

**Mr Collins:** No, in fact—

**Senator CAMERON:** That is what this fish is worth—\$600 million a year in lost government revenue. That is what it is—isn't it?

**Mr Collins:** Yes, that is an estimate of the size of the problem.

**Senator CAMERON:** So \$1.8 billion over three years—that is not a big fish?

**Mr Collins:** The thing is if we applied the resources that you are describing to consider just that one proposal, we would not be able to do things like provide our phoenix risk population, understand the actions of key intermediaries in the market and be able to deploy people to actually deal with the problems. So it is a balancing act. Once something gets to a certain point in the process where we think it is a serious proposal being raised by another agency, we would naturally look at it more seriously.

**Senator CAMERON:** But if you could improve it by 10 per cent over three years, that is \$1.8 billion. Surely that is worth a little investment by the ATO to work out how this proposal would affect it.

**Mr Collins:** If it got to the point where we actually had a costing like that, we would look at it in those terms. But, as I said, it was only discussed as something which some stakeholders in some agencies—

**Senator CAMERON:** But these are your figures.

**Mr Collins:** No. The figure you described is actually one of our figures. The estimate that it might actually result in a 10 per cent improvement or something like that is actually hypothetical.

**Senator CAMERON:** Yes, hypothetical but realistic—isn't it? A 10 per cent improvement—are you telling me that is unrealistic?

**Mr Collins:** I cannot comment on that.

**Senator CAMERON:** Why not? Why can't you comment?

**Ms Field:** In relation to this proposal, obviously if it was being considered at the forums, we will have a look at what that might do to assist us. But, as you can see from our submission, there was a significant range of activities that we are trialling, investigating or implementing. In particular—

**Senator CAMERON:** A meeting once every three to six months is not going to grind the ATO to a halt—is it, really?

**Ms Field:** No.

**Senator CAMERON:** Engaging in developing a phoenix risk model is not going to grind your organisation to a halt. Surely, you can walk and chew gum at the same time.

**Ms Field:** Maybe the representation that was just made might have misled the committee. From our perspective, there is a whole range of activities that are happening across our

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organisation in relation to the phoenix. This is one proposal and it was raised with someone who has appeared before the committee and they advised me about that today. But more broadly—

**Senator CAMERON:** It has been raised by more than one person. I do not think there has been a hearing that we have been involved in where someone who has appeared has not put the proposition to us that that is the way to resolve the problem. If it is \$1.8 billion over three years in lost government revenue, I am simply saying that if this resolve the problem, it is a huge financial gain for government, and you have not even looked at it. That is my concern. I am saying: why not?

**Mr Cranston:** Just to be careful—the organisation is a big organisation, and I just want to make sure we have not looked at it in some way, shape or form—we will take that on notice. If we have not looked at it—we have been looking at a lot of different things and worked at retrieving a lot of different things—

**Senator CAMERON:** You have outlined them. My view is that this is all positive. But the fundamental issue that has been put to us, to resolve the problem, is the establishment of a compulsory trust fund where construction companies and small builders get paid. When they get paid, they pay tax; when they do not get paid, they do not pay tax—isn't that right?

**Mr Cranston:** Yes.

#### **Answer:**

The ATO is preparing a response addressing a written request from the Committee Chair, Senator Sam Dastyari dated 14 October 2015. The response will be provided by 27 October 2015.