

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into corporate insolvency in Australia

2022 - 2023

Division: Market Conduct Division
Topic: Insolvency information across jurisdictions
Reference: Spoken (p. 56)
Senator: Deborah O'Neill

Question:

CHAIR: You make me think about the reality of what information lies within different government entities and how intransigent and difficult it is for insolvency practitioners to get the information that they need, which must be held often in BAS statements and other documentation that the ATO would hold about employees and businesses. There may be a gap where there are contractors, whether they're willing or non-willing contractors, to participate in particular industries. There may be a gap where there's labour hire, but they should still be reporting who they're paying.

It seems to me that there are data-rich sites that are not being accessed in an efficient way at all by insolvency practitioners when insolvency is triggered, and there's a huge cost embedded in the inability to access that. Privacy matters to all of us, but once you hit that point, there would be potential technological advantages in making information available in ways that are currently novel in this country. Are you aware of any jurisdictions where insolvency might trigger better access to information, if not for private insolvency, in the case of personal bankruptcy, for the relevant body or entity, and establish a corporate insolvency equivalent to that relevant entity?

Mr Dickson: I think I'd have to take that one on notice, unless my colleague has anything further to add on that.

Ms Irwin: No, just to note that, prior to this committee process, we heard some feedback from stakeholders along those lines—for example, difficulties in obtaining information from banks or financial institutions, even that it takes quite some time after they're appointed and they make a request to get that information. Obviously, as you could imagine, that's often a crucial source of information they need to continue with their role.

Answer:

When a company enters external administration, it triggers legislative requirements for companies to provide certain information to the external administrator. In turn, the law requires external administrators to lodge information with ASIC at various points.

In addition, Treasury is aware that in the course of external administration, external administrators will often engage with other regulators and agencies such as the ATO (as a creditor) and the Department of Employment and Workplace Relations (as administrators of the Fair Entitlements Guarantee scheme).

Treasury is not aware of how external administrators obtain information from government agencies in other jurisdictions.