

Coalition Senators' Additional Comments

Coalition Senators wish to thank all those who participated to this inquiry and in particular the Committee Secretariat for producing such a comprehensive report on an important and complex issue. The majority report provides a thorough account of the issues and challenges encountered in the Australian building and construction industry. Clearly, the evidence presented during the course of the inquiry shows that the high rate of insolvencies in the building and construction industry is adversely impacting on the health and integrity of the Australian economy. The social impact and economic cost—not to mention the indirect effects on productivity—stemming from the high rates of insolvency in the sector, is worrying.

The Report includes many recommendations for the Government, but also for state and territory governments and various agencies, including ASIC, the ATO, the Australian Financial Security Authority, as well as the industry itself.

The Government will give a considered response to the full list of recommendations in due course. Many of the recommendations are interlinked—15 recommendations refer to ASIC directly—and as such need to be assessed as a package to determine their likely overall impacts and effectiveness. Given this, it is not appropriate to address them piecemeal at this time.

However, in considering the optimal regulatory and policy responses to the problems identified in the construction sector the following considerations are relevant.

First, in considering any new regulation, policy makers need to be mindful that it does not discourage healthy businesses from restructuring. In particular, such regulation needs to balance the need to crack down on advisors facilitating illegal phoenix activity or advising businesses how to avoid their debt obligations, with ensuring that the right regulatory settings are in place to ensure that people can restructure their businesses. Corporate restructuring is often a necessary and beneficial strategy to ensure the ongoing viability of a business or to provide the greatest value to creditors.

More broadly, as the inquiry heard, in addition to the restructuring of existing businesses, a degree of business entry and exit is a feature of any dynamic and productive sector of the economy. It has been Australia's experience that in a healthy business environment productive start-up businesses, as well as existing businesses that are well managed, innovative and productive, tend to increase market share relative to less productive ones over time—driving up overall industry productivity and yielding wider economic benefits. However, where business restructuring reflects

illegal activities and practices, as identified in this inquiry, this process damages rather than strengthens the industry.

As part of its red tape reduction agenda the Government has committed to an ongoing process of reducing the cost of unnecessary or inefficient regulation imposed on individuals, business and community organisations. In addressing the very real problems identified for the construction sector, we need to ensure that the regulatory approaches adopted to address illegal and unproductive industry behaviour do not also drive up costs for law abiding and productive businesses. Such an approach would be counterproductive and ultimately lead to increased insolvency and problems within the industry, with adverse flow-on impacts across the economy.

In regard to this point, we wish to note our concerns about the report's major recommendation that, commencing in July 2016 the Commonwealth commence a two year trial of Project Bank Accounts on construction projects when the Commonwealth's funding contribution exceeds ten million dollars. We note that the report, in effect, assumes that the trial will be successful and calls for the Commonwealth to legislate to extend this to the private sector. This approach runs the risk of pushing up costs for both the taxpayer, and law abiding businesses in the industry, without addressing the underlying cause of the problem.

Second, any regulatory responses need to address all instances of systemic illegal or improper behaviour in the construction industry. This includes the widespread and systemic instances of construction unions abusing their positions to intimidate, coerce and bully law abiding individuals and businesses within the construction industry that have come to light during the course of the Royal Commission into Trade Union Governance and Corruption. The evidence gathered during the course of the Royal Commission has revealed that businesses and workers in the construction sector have been a particular target for such practices, and that this can only contribute to the development within the industry of a culture of lawlessness and inappropriate behaviour that is harmful to workers and businesses alike.

Third, many of the recommendations touch on, and potentially overlap with, areas of ongoing policy development and review for the Government. These include the Government's plans under the innovation and science agenda, the Government's construction industry reform agenda, as well as wider reforms to taxation and financial advice.

Further, as the committee report notes, the ongoing work of the Phoenix Taskforce initiative established by the Inter-Agency Phoenix Forum is also highly relevant. The Taskforce brings together key federal and state agencies to expand these activities by developing and using sophisticated data matching tools to identify, manage and

monitor suspected fraudulent phoenix operators. The stated intention of the Phoenix Taskforce agencies is to support businesses that want to do the right thing while also dealing with those who choose not to meet their obligations. Membership of the Taskforce is diverse, encompassing the:

- Australian Crime Commission,
- Australian Federal Police;
- Australian Securities Investment Commission;
- Australian Taxation Office (including the Australian Business Register);
- Clean Energy Regulator;
- Department of Employment;
- Department of the Environment;
- Department of Immigration;
- Fair Work Building and Construction;
- Fair Work Ombudsman;
- ACT Revenue Office;
- NSW Office of State Revenue;
- Northern Territory Treasury;
- Office of the Migration Agents Registration Authority;
- QLD Office of State Revenue;
- Revenue South Australia;
- Tasmanian State Revenue Office;
- Victorian State Revenue Office; and
- WA Office of State Revenue.

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.

Finally, many of the recommendations relate to capabilities and resources available to ASIC. This is the subject of an ongoing review. The Government announced in July a review to consider the capabilities of the Australian Securities and Investments Commission (ASIC). The review will ensure that ASIC has the appropriate governance, capabilities and systems to meet these objectives and future regulatory challenges. In undertaking the review, the expert panel will consult extensively with private sector businesses regulated by ASIC, peak bodies, regional and consumer representatives and other stakeholders. This announcement forms part of the

Government's response to the Financial System Inquiry (Murray Inquiry), which recommended periodic reviews of the capabilities of financial regulators, commencing with a review of ASIC in 2015 to ensure it has the skills and culture to carry out its role effectively. The findings of the capability review will also provide information to assist the Government's consideration of the Murray Inquiry recommendation for ASIC's regulatory activities to be funded by industry.

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