

Fair Work Ombudsman releases new research into phoenixing

4 July 2012

The Fair Work Ombudsman today released a new research report into phoenix activity in Australia.

Phoenix activity, *Sizing the problem and matching solutions*, prepared by PricewaterhouseCoopers, estimates the cost of phoenixing at between \$1.78 billion and \$3.19 billion.

The report defines phoenix activity as: “the deliberate and systematic liquidation of a corporate trading entity which occurs with the fraudulent or illegal intention to:

- avoid tax and other liabilities, such as employee entitlements; and
- continue the operation and profit taking of the business through another trading entity.”

The report estimates that the annual cost of phoenixing in Australia is:

- Between \$191 million and \$655 million for employees, in the form of unpaid wages and other entitlements;
- Between \$992 million and \$1.93 billion for businesses, as a result of phoenix companies not paying debts, and goods and services paid for but not provided; and
- Between \$601 million and \$610 million for government revenue, mainly as a result of unpaid tax – but also due to payments made to employees under the General Employee Entitlements and Redundancy Scheme (GEERS).

The report also acknowledges that there are a range of further impacts of phoenixing that were not able to be quantified, such as the impact on businesses’ revenue of being undercut by phoenixing companies, which gain an unfair competitive advantage by avoiding payment of debts.

The report identifies a number of high-risk industries, including private security and cleaning.

Fair Work Ombudsman Nicholas Wilson says the research was commissioned because his Agency had identified an increasing trend in companies engaging in phoenixing-like behaviours to avoid paying employee entitlements and court-issued penalties.

The Fair Work Ombudsman and PricewaterhouseCoopers consulted a number of key stakeholders during the course of the research, including Government Agencies, and employer and employee groups.

The research report makes a series of recommendations about measures for addressing phoenixing, including cross-Agency approaches to targeting phoenix behaviour and educating the community about indicators of phoenix activity.

Mr Wilson says the research report will help inform his Agency’s education and compliance processes in relation to phoenixing.

“We are presently giving serious consideration to many of the report’s recommendations,” Mr Wilson said.

“We have made significant progress in establishing relationships with other regulators, including the Australian Securities and Investments Commission and the Australian Taxation Office, to work collaboratively in this area.

“The Fair Work Ombudsman has jurisdiction in relation to some consequences of phoenix activities, such as underpayment of employee entitlements, while Agencies such as the ATO and ASIC have jurisdiction for other aspects, such as tax avoidance and fraudulent behaviour, so it is important we work closely with these Agencies.”

The report is available at www.fairwork.gov.au

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Report: Phoenix activity report (PDF 774KB) (www.fairwork.gov.au/ArticleDocuments/714/Phoenix-activity-report-sizing-the-problem-and-matching-solutions.pdf.aspx)

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