

Phoenix Tactics: The Geelong Advertiser

Article by Nicholas Payne, courtesy of the Geelong Advertiser: www.geelongadvertiser.com.au

INSOLVENCY experts have called on business watchdogs to better regulate operators amid a rise in illegal “phoenix” tactics, with at least three companies subject to the activity in Geelong over the past 12 months.

Phoenix schemes involve failing companies being stripped of their assets, which are then placed into a new company so the former business doesn’t have enough money available for creditors.

University of Melbourne Phoenix Research Team leader Helen Anderson said the tactic meant “there’s little money available for the liquidators to investigate whether there’s been any improper action”.

The name comes from the fiery bird of Ancient Greek mythology, which was said to die in a burst of flames and be reborn from the ashes.

The unscrupulous tactic is estimated to cost the Australian economy more than \$3 billion annually.

National specialist insolvency firm Jirsch Sutherland held an end of financial year session in Geelong this week addressing local lawyers and accountants on the “significant problem”.

Prof Anderson joined the session as a guest speaker, alongside Jirsch Sutherland Geelong partner Philip McGibbon.

Mr McGibbon said at least three Geelong companies have been caught out engaging in phoenix activity over the past financial year.

“The action of the directors have led to employee entitlements, the Australian Taxation Office and tradies not being paid,” Mr McGibbon said.

“The companies have changed their name and utilised relatives to be directors and on occasion have nominated friends to be directors.”



He said the issue was sometimes coupled with “straw directors” — people who are put down on paper to run a company without their knowledge.

“There have even been recent examples of homeless people being named as ‘directors’ of companies,” Mr McGibbon said.

Jirsch Sutherland is pressing both the ATO and Australian Securities and Investments Commission to focus on four key elements to tackle phoenix schemes — education, licensing, compliance and insurance.

“The same level of regulation should apply to these operators as is in place for those who provide financial advice,” Mr McGibbon said.

“While there have been some prosecutions resulting in criminal charges, rogue operators are still a significant problem.”

A Fair Work Ombudsman and PricewaterhouseCoopers report into phoenixing found the cleaning and private security industries were those at the highest risk of phoenix activity.

The report estimated there were at least 6000 phoenix operators in Australia.