

**Parliamentary Joint Committee on Corporations and Financial Services**

**Inquiry into Corporate Insolvency in Australia**

**ANSWERS TO QUESTIONS ON NOTICE**

**Australian Taxation Office**

January 2023

**Agency:** Australian Taxation Office  
**Question No:**  
**Topic:** Director Penalty Notice numbers  
**Reference:** Spoken (13 December 2022)  
**Senator/MP:** Deborah O'Neill

**Question 1:**

**CHAIR:** ... We're in the realm of so much complexity, it is trying to just check knowledge before asking the question. So, you went through a bit of a description about DPN and giving the awareness letters to 45,678 businesses, contacting 24,140. Was that by phone?

**Ms Kitto:** Yes.

**CHAIR:** Was that on a risk-based assessment or was it just random?

**Ms Kitto:** I would have to take that on notice to make sure I provide the correct answer.

**CHAIR:** So 30,000 have taken action? Or you've taken action? Who has taken action?

**Ms Kitto:** The clients have taken action. What we mean by that is they may have paid in full. They may have entered into a payment arrangement by self-serving via our online systems. They can actually enter into payment arrangements online up to the value of \$100,000 of debt. Beyond that they do need to contact us to allow us to consider their circumstances and their financial capacity to pay.

**CHAIR:** There are 15,678 remaining. What's the story with them?

**Ms Kitto:** Of the remainder, 3,601 have paid in full and—I will have to check my maths add up here—a further 1,068 clients, as I mentioned, have notified us of insolvency. For the remainder—and I think we did mention this in our submission as well—we have moved into the issuing of director penalty notices following the awareness campaign.

**CHAIR:** I will come to that now.

**Ms Kitto:** Of that subset we have issued 7,523 DPNs following the initial awareness campaign of 45,678.

**Question 2:**

**CHAIR:** Of the 1,068 that have got caught up in insolvency—because that is what this inquiry is about, so we're trying to get a sense of the scale here—is there any overlap with those 1,068, which involved \$363 million, with the director penalty notice to the 7,523? Is there any overlap there or are they two completely separate cohorts?

**Ms Kitto:** I would have to double-check whether they are separate. I believe they are but I would need to confirm that for the record.

**CHAIR:** If you could do that, that would be great. Of that 1,068, what's happened? And what has happened with the \$363 million?

**Question 3:**

**Ms Kitto:** Of the 1,068 that have notified us of insolvency or that they are no longer in business—

**CHAIR:** Are those two things the same in your view?

**Ms Kitto:** Not necessarily. If they've notified us of insolvency they will have come through the system and actually notified us through our processes. I would have to dig a little bit further as to the meaning of just no longer in business. I am assuming that that means that they have not separately notified us, but we may have, as part of contacting them, discovered that information. What I would say is that those clients would now have what we would call an insolvency accounting treatment, or insolvency indicator, applied to their accounts. The point at which we do that is where the clients have notified us that they have either appointed an administrator or a liquidator or a small-business restructuring practitioner or put the company into voluntary administration. So they've reached the point of insolvency and they have notified us of that.

**Question 4:**

**CHAIR:** What about the ones that have just stopped using their ABN, and have been struck off by ASIC

**Ms Kitto:** I'm not sure whether you are referring particularly to the 1,068 or more broadly.

**CHAIR:** Are there any in that 1,068 that are businesses that are no longer in business, as opposed to formally insolvent?

**Ms Kitto:** I am not 100 per cent certain that it is the subset there—I can confirm that for you—but there would be businesses of that type that are no longer trading and no longer in business, and that are either not engaging with us or we have been unable to contact them. That would potentially receive or form part of the next age of the firmer action, in this case being the issuing of the director penalty notice, but really that just forms part of our continuous debt recovery procedures until we can no longer identify them. Then they may be escalated for non-pursuit of debt, for example, if they are uneconomical to pursue debts, but it really becomes a matter of priority.

**Answer:****Question 1**

The Director Penalty Notice (DPN) awareness campaign identified clients that were eligible for a DPN and was aimed at generating awareness as an early warning. The awareness campaign letters were issued to all eligible directors of companies with an eligible debt of a certain amount and certain age who had not taken steps to address that debt. Following the letter campaign, all clients with outstanding debts who still hadn't responded to the ATO's engagement attempts or made effort to pay their debt (such as entering a formal payment plan) were included in the telephony campaign. Following the telephony campaign, clients were assessed for risk and next steps of which a DPN was one option.

**Question 2**

From the 45,678 awareness campaign population, 1,068 entities notified the ATO of insolvency, of which 356 businesses had a director that received a DPN.

During July to September 2022, the ATO issued 10,062 DPNs in total to Directors of 7,479 businesses (not 7,523 as originally stated). This is inclusive of the DPNs issued to the original awareness campaign population for the same period.

### **Question 3**

A business that is insolvent may no longer be in business, but a business that has ceased trading is not necessarily formally insolvent. An insolvent debtor is an entity that is subject to an external administration, whether or not it has ceased to trade. A business that has simply ceased to trade but is not subject to external administration would not necessarily be insolvent.

### **Question 4**

There are no businesses counted within the 1,068 that are 'no longer in business' as opposed to formally insolvent. The 1,068 figure relates only to entities who have formally notified of insolvency.