

17 May 2023

Committee Secretary
Environment and Planning Committee
Parliament of Victoria
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Via online lodgement

Dear Senior Clerk,

Submission to the inquiry into employers and contractors who refuse to pay their subcontractors for completed work

CPA Australia represents the diverse interests of more than 170,000 members, working in over 100 countries and regions around the world, including over 37,000 members in Victoria. We make this submission on behalf of our members and in the broader public interest.

Building and Construction Insolvency

CPA Australia recognises that the building and construction industry is facing significant economic challenges, with rising building costs and inflation significantly affecting the cash flow of many participants. However, these economic challenges are not limited to building and construction, with insolvency rates increasing markedly across the economy in most industry segments. Recent insolvency figures released by the Australian Securities and Investments Commission on 1 May 2023 indicate that in the financial year to date, there have been 1672 companies that are deemed to be construction companies enter some form of external administration. This represents 28 per cent of total insolvencies.

Our members are telling us that insolvency rates are still proportionally low compared with peak insolvency rates experienced over a decade ago and are now only tracking above the low 2019 insolvency rates. Insolvency rates may be rising due to increased recovery activity by many businesses. During Covid-19, creditors were unable to wind up insolvent entities via the courts and the Australian Taxation Office took a soft approach to debt collection. Government support payments such as JobKeeper and Business Costs Assistance Program (BCAP) grants reduced incentives for insolvent entities to voluntarily wind up their affairs.

Our members who work in insolvency tell us they do not usually encounter instances of building clients refusing to pay subcontractors for completed work. Moreover, they tell us that the current practices of the Victorian Building Authority and the Victorian Managed Insurance Authority reduce the options for builders to formally restructure their business.

Cancellation of building licenses due to an insolvency event

Our members and other stakeholder groups tell us that builders who hold a license with the Victorian Building Authority automatically lose their insurance upon an insolvency event, which in turn triggers them to lose their building license. This means that any license holder who may be experiencing financial difficulty cannot avail themselves of federal insolvency legislation, which allows a business to restructure their affairs and reach an agreement with creditors to make a payment under a Deed of Company Arrangement or a Small Business Restructure. This significantly hampers a business' options to continue to trade and make payments to its creditors under a formal restructure. It can be argued that without the ability to access federal insolvency legislation and formally restructure in a legal manner, it is inadvertently encouraging participants in the construction industry to consider illegal phoenix activity – including refusing to pay their subcontractors for completed works. Reforms to the current insurance requirements and regulation of licenses may incentivise businesses to act earlier in looking

for help on their financial position and to make decisions that will encourage payments to subcontractors when facing difficulty.

We draw your attention to the Senate Inquiry into Corporate Insolvency and suggest that any changes to Victorian legislation aligns with Federal legislation to enable greater participation in insolvency law.

Changes to security of payments for subcontractors

Our members tell us that it is rare for businesses to purposely not pay their subcontractors. Any changes to this legislation that are considered need to be measured and be easily followed. The current experience in Queensland, for example, shows that there is a critical need to ensure that any proposed changes to the security of payment legislation needs:

- to be fit for purpose
- the costs of compliance to not exceed the benefits
- practical changes that take account of the reporting and assurance arrangements currently in Australia
- allow and encourage accounting and audit professionals to assist businesses in this space in a practical way
- consider other approaches that remove unintended incentives to not pay subcontractors, such as reforms to how the VBA and VMIA treat formal (legal) restructures.

CPA Australia has been engaged with policymakers in Queensland on this issue for many years and we offer the Committee and the Government our help in the drafting of regulations and requirements as needed.

If you have any queries regarding CPA Australia's ongoing engagement on these matters, please contact Kristen Beadle, Manager, Professional Standards and Business Support on 0413 883 581 or kristen.beadle@cpaaustralia.com.au .

Yours sincerely,

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