



Australian Institute of Building Submission to the *Inquiry into Construction Industry Insolvency in NSW – Discussion and Issues Paper*

Introduction

The Australian Institute of Building (AIB) welcomes the opportunity to respond to the *Inquiry into Construction Industry Insolvency in NSW – Discussion and Issues Paper*. While the AIB is keen to see more efficient and thorough security of payment legislation, and welcomes this review, we believe that the NSW Government also needs to address the current dire financial situation that builders find themselves in, and not just subcontractors. AIB advocates the need for a symposium or conference to comprehensively address this issue. This submission should be read in conjunction with the AIB submission to *Inquiry into Construction Industry Insolvency in NSW - Terms of Reference* – see Appendix 1.

Vision

The vision of the AIB in regards to this review is to ensure that:

- The building sector in NSW is improved through higher educational standards;
- The building industry is a viable and growing sector for the benefit of the state, consumers and builders; and
- Builders and sub-contractors are informed, educated and provided with adequate legislative protection and support, to reduce payment disputes.

Questions/Issues for comment:

The Questions/Issues for comment will be answered in order.

No witness to the Inquiry thus far has convincingly advanced the idea that subcontractors are protected to a proper or appropriate level from the consequences of insolvency.

AIB is of the view that subcontractors are often their own worst enemy, as they frequently do not manage their financial affairs as well as they could and should. For builders, the profit margins are simply too low to be sustainable – around 1.5 percent for last 10 years, whereas around 17.5 percent is needed. However, builders persevere, hoping things will get better. Builders often need income from other

sources than building to survive. Successful builders are the ones that have equity (i.e. they are developers and not just contractors), and can be masters on their own projects, rather than working for clients. Clients select the lowest tender every time, and this results in margins being very low. Many tenders are not compliant, which adds extra costs to make them compliant. The situation with the tendering system is flawed in NSW and every state, as builders are expected to fix architects design faults and absorb the costs. Design and Construct (D&C) used to be a six month process, but now the tenderer is chosen and construction starts when the D&C is only 80% complete. Currently there is no equity or fairness for builders.

Builders spend large sums to tender for jobs, and clients abuse this. A system to compensate builders for detailed quotes or tenders should be considered. There was the Giles Royal Commission 25 years ago, and subsequently the NSW State Government took MBA and some builders to court for collusion for a scheme of this nature, so the issue was not addressed at that time. A trust should be set up to cover costs of tenders for all players, and the scheme would also protect subcontractors. Such a scheme should be open and transparent.

The Inquiry is presently of the view that subcontractors are not adequately protected.

Subcontractors cannot usually be adequately protected in the present circumstances, as they cannot be paid well, as builders are being forced to do things at less than cost. For example, if a building company has 12 buildings under construction, at least two of the projects will usually operate at a loss. It is not unusual for a project to cost \$1 million more than what the contract stated.

Builders are also not adequately protected, and it is not uncommon for builders not to receive the final payments owed to them. It is usually more expensive to take the client to court than the value of the final payment.

Margins are simply too low for builders to operate successfully, and provide adequate security to subcontractors. It is true that without risk there is no profit, but at the moment there is no profit and a lot of risk in the building industry in NSW, especially for builders.

Subcontractors have little option but to agree to payment terms such as those outlined above (page 17 of discussion paper), in an industry where margins for both contractor and subcontractors are approaching if not settled, at an all-time low.

AIB would like to again emphasise that it is builders shouldering most of the risk, rather than subcontractors or developers. The situation of subcontractors will not be improved until the situation of builders is improved. Building companies sometimes agree to margins of up to minus 10 percent just to win contracts, get some turnover, and hope that any losses will be recouped in future years. Not only are builders and the Private Certifying Authority taking on the risk, but Professional Indemnity insurance needs to be paid up for seven years in advance.

The need to protect current work arrangements and not damage prospects of securing future work, means that many subcontractors simply take the work that is offered to them, at a price they may not agree to under different circumstances.

AIB agrees with this statement, but the same is true of builders. This situation contributes to both subcontractors and builders becoming insolvent. For subcontractors and builders the maximum payment terms should be 45 days, and preferably 14 or 30 days. Builders often need alternative income to survive, and often become developers (and not just contractors) to try to secure their financial position.

There is a case that may be made that existing protections are inadequate and should be improved.

It is noted that the NSW Government - GC21 (Edition 2) - General Conditions of Contract includes trust fund provisions. Do these provisions work and is there a case to be made for these provisions to be mandated in all construction contracts?

AIB does not believe that these provisions work, and nor is there a case to be made for these provisions to be mandated in all construction contracts.

The Inquiry welcomes further evidence of the different impacts of insolvency on subcontractors.

Are there particular reasons why subcontractors in the construction industry should be given greater priority in situations where they are an unsecured creditor?

AIB believes that giving subcontractors greater priority where they are an unsecured creditor would not work, and that they should not be given greater priority. The 'Hierarchy of Liens and Charges' cannot and should not change. However, subcontractors should be secured in some form, thus an insurance scheme or scheme similar to the rental bond board may be worthy of consideration. The day-to-day living is being affected for subcontractors who are affected by non-payment.

Building companies should show that they have done the right thing, and many companies pay subcontractors before they pay themselves. Subcontractors currently usually make 10 percent margin, whereas builders usually make 1 percent margin.

There is a lot to be said with doing away with the costly and inefficient Local Court, District Court and domestic arbitration proceedings for disputes say under \$50,000 and for providing a means through a revamped CTTT for resolving such disputes quickly, fairly and efficiently.

There is a need to have arbitration, but the courts and CTTT are not the answer. The CTTT simply does not have the expertise to make judgments. Bodies like the Department of Fair Trading, MBA, or AIB could all provide adequate arbitration. AIB advocates the need for a symposium or conference to comprehensively address this issue.

Currently, builders are shouldering the costs from non-compliant designs, and unfortunately Building Information Modelling (BIM) will not help this situation. Again, it is builders who are shouldering almost all the risk. Going to court is often a commercial decision for builders, as it can often cost around \$30,000 to \$50,000 to do so. Currently, arbitration costs are shared between both parties, so this is less than equitable to the party in the right.

This may also be achieved through a legislative framework similar to that operating in Queensland (see Term of Reference 3(h) of this Paper) or through an integration and consolidation of existing functions within NSW Government departments and tribunals.

AIB is not against the idea of tribunals, but the people on any such tribunal must be building-qualified rather than architecture or engineering-qualified.

Do you support the introduction of prompt payment provisions in SOPA?

AIB supports the introduction of prompt payment provisions in SOPA, but emphasises that there should also be the same provisions available for builders. If there is no protection of builders' cash flow, there will be no protection for subcontractors.

What might be an appropriate maximum time period for payment? You may wish to consider the existing provisions operating in some jurisdictions.

In Queensland:

For construction management trade contractors and subcontracts: A provision which stipulates that a progress payment is to be paid more than 25 business days after submission of a payment claim is "void" (s.67U of the BSA).

For commercial building contracts – A provision which stipulates that a progress payment is to be paid more than 15 business days after submission of a payment claim is "void" (s.67W of the BSA).

In the Northern Territory:

Provisions requiring payment greater than 50 days after being claimed are to be read as requiring payment within 28 days (s.13 of the Construction Contracts Act 2004).

In Western Australia:

Provisions requiring payment greater than 50 days after being claimed are to be read as requiring payment within 50 days (s.10 of the Construction Contracts Act 2004).

What form of evidence/certification should be required in relation to work performed and payment due?

The evidence should be that the work has been done in accordance the contract. The client should employ an independent project manager to oversee the project, or a clerk of works or quantity surveyor. It comes back to risk, as the builder takes on all the risk with D&C contracts. Too many consultants are not qualified in costings, progress claims and inspection, such as architects and engineers. Also, there is no statutory protection of the work of architects. A quantity surveyor should be required to verify costings of progress claims, but not to oversee. There is a tendency to 'front-load' costings and progress payments, but the cash-flow is still not sufficient to keep builders and subcontractors viable.

What might be some of the key elements of strategies to increase business financial management skills in the construction industry?

There definitely needs to be increased financial management skills in the construction industry. The project manager should understand contracts, the Building Code of Australia, building processes and how to run a business, so they need legal, accounting and building knowledge and skills. There is not enough emphasis in courses on financial management, and there is more risk with D&C. For trade contractors in the state, as opposed to builders, there is no requirement for an individual licence to have any qualifications other than a Cert III in his particular trade. Further, this means that an individual trade contractor while possessing a Cert III may not have even have completed an apprenticeship to acquire the physical practical skills of his trade. Also, in the commercial sector, only the 'service trades' (e.g. electrical, plumbing) are required to be licensed, and anyone in the commercial sector can work in the 'architectural trades' (e.g. carpentry, bricklaying) and building. All trade contractors throughout the industry should be licensed, and as a minimum should have Cert IV in Building Construction (Trade Contracting) CPC40708, or Cert IV in Building Construction (Specialist Trades) CPC 40611, or Cert IV in Building Construction (Contract Administration) CPC 40208.

Is there a need for mandatory continuing professional development for subcontractors in relation to business and financial skills?

AIB believes that this could be considered. However, more important than continuing professional development (CPD) is to be properly qualified and licensed in the first place. See answer above. AIB is aware that MBA currently runs CPD courses in business and financial skill for subcontractors.

Readers are again invited to comment upon the proposal: Consider legislative or other policy responses that can be taken to minimise the incidence and impact of insolvency in the industry, including:

A mandatory insurance scheme to secure payments to subcontractors

AIB doubts whether such a scheme would be legally possible given Australian contract law, and also doubts whether such a scheme could be enforced. However, a workable detailed model could be presented to relevant stakeholders for comment. An insurance scheme may be preferable to a trust. AIB also believes builders should be included in any such scheme to protect against defaulting clients.

Often developers hold up final payments to builders on spurious claims, and \$30,000 is a normal amount owed. This hurts smaller builders, and also affects subcontractors.

AIB believes that 'one size does not fit all', and that all situations are different. Furthermore, the prior NSW State Government was notorious for not paying its bills on construction projects. There are processes in place to make sure that builders do not over-claim via the use of quantity surveyors, so builders only just get paid enough. However, there are no processes in place to ensure that subcontractors do not over-claim. Subcontractors like the flexibility of being independent, but expect to be treated like employees and be paid regardless of whether they have done a good job or not. Insurance also needs to be paid by builders of several thousand dollars, so paying into a trust fund would add an extra burden.

As indicated above (p.37 of discussion paper), the Inquiry is giving special consideration to whether a statutory trust provision, modelled along the lines of the statutory trust provision in s.8 of the Ontario's Construction Lien Act R.S.O. 1990, c. C.30, should be adopted. It is to that specific provision that the Inquiry invites responses.

AIB does not have any comment on this at this point in time.

The Inquiry would like to receive detailed and reasoned comments on the benefits and the problems that would be associated with establishing and implementing a legislated trust fund system in NSW and detail the impact it may have on the construction industry.

AIB generally opposes the idea of a trust fund, but would need to see a detailed proposal to comment properly. If such a fund did eventuate, the funds should be provided by developer/client, not the builder.

Currently, there are already levies collected, including the Building Long Service Leave Fund, which is paid to councils and goes to State Government. There is billions in this fund, and it is administered very poorly.

Builders also need to pay for an Officers' and Directors' Insurance Policy, and while it depends on the individual making the application, it only covers 20 percent of any potential loss, and not 100 percent. Apart from the fact that there is very little money to go around, builders simply do not make much money.

Readers are asked to comment upon some specific questions about the Construction Trust itself set out at the end of this section.

The Inquiry wishes to be in a position to advise the Government of:

- a) The approximate amount of such funds being invested from time to time during the payment cycle so that the Government may make a clear and helpful appreciation of the effect upon the conduct of business in NSW if there was to be a restriction which clamped the ability of the contractors to use funds in that way.**

The size of the funds invested depends on the size of the project and generally payment terms are 45 days on larger projects and 30 days on smaller projects. AIB would prefer an insurance scheme to a trust fund scheme. There seems to be the assumption in the above question that builders make a lot of money, and have significant cash flow, but that is not the case. Furthermore, a system to allow charging for supplying tenders is needed.

A system where the NSW Government or Government agency would hold the some or all the funds and take the interest would not help with cash-flow on construction projects. Investments may or may not turn profit or even survive as an investment, and the money does not belong to the Government to invest in the first place. Thus, the AIB is opposed to this type of scheme.

- b) The nature of such investments and in particular how secure they are.**

Currently the construction industry is about cash and cash-flow not investments. Any funds sitting in bank accounts need to be 'at call'. There is a lack of money in the construction industry, and builders often put their family home at risk for financing building projects.

- c) The terms of such investments whether they are at call or otherwise and so on.**

Any funds have to be 'at call' to assist with cash flow.

- d) The range of rates of return upon such investments.**

AIB believes that this question is 'loaded' in the sense that it is assuming that consent is given for the Government to invest funds, which it is not. While 4 percent is prevailing cash rate for investments, the AIB would need to see further detail of any investment scheme before commenting further.

- e) How the investments are treated in the accounts of the head contractor.**
- f) How important to the financial position of head contractors is the income that is earned from these investments.**
- g) Contractors and other interested parties to whom this Paper has been sent are invited:**
 - 1) To respond to those matters about which the Inquiry seeks further information in relation to the contractor's use of free capital.**
 - 2) To comment and critique the commentary in this section and in particular, any issues concerning the payment cycle case example and model provided.**
 - 3) To prepare and forward their own model of the investment/payment cycle.**

AIB believes that the above proposals are unrealistic, as most builders are living week-to-week, and subcontractors the same. There simply is no income from investments. Builders often have to put up a bond for \$1.5 million as security that the job will be done and done correctly, and receive no interest on this – the client usually collects the interest. Decent clients will share the interest, however. Furthermore, third parties simply cannot control the payments of companies, as this would be a form of socialism and fundamentally undemocratic.

Paying into a trust fund would accelerate builders going insolvent. No builders have \$100 million to secure a \$100 million project. On \$30 million job, paying \$50,000 for free additions is normal in the last 12 months, to get back the 2.5 percent 'balance of retention', which is the guarantee that everything will be satisfactory upon completion. Developers have builders 'over a barrel' on this, as 2.5 percent is usually more than the profit margin on a job.

There are significant funds in the Builders Licensing Board Fund that the Government could use as a trust/compensation fund for builders and subcontractors that have been left out of pocket due to no fault of their own.

AIB advocates that the current NSW Government and relevant public servants need to sit in a room with 4-5 builders to hear how the situation really is. The builders involved ideally will have been in the industry for a significant time, and have firms that range in size from \$5 million to \$50 million turnover per annum. The spread of risk in the construction industry is currently simply not equitable. Clients know that the market is so tight, that builders will accept the work anyway. Banks often express surprise that builders do work with 1.5 percent profit margin, and typically the client (the developer) will get 30 percent profit margin.

Some questions about the Construction Trust itself:

- 1) What are the terms of the trust? It is suggested that the trust may follow the lines of the model section reproduced above. In order to come to a concluded view about that, one must first analyse whether or not the three separate trusts which are brought into existence by the Ontario legislation is the model that ought to be followed 27.**
- 2) What is the trust property? How is it to be specifically ascertained if there is a dispute between the contractor and the subcontractor as to the proper amount of money said to be due and payable by the head contractor to the subcontractor?**
- 3) For how long is the head contractor entitled to hold the trust monies?**
- 4) What are the duties of the head contractor as trustee?**
- 5) How does the proposal work for multiple subcontractors and suppliers flowing down the construction line?**
- 6) Is the trust an effective protection for the subcontractor in the event of the contractor's insolvency? If so, to what extent?**
- 7) How can the subcontractor, as beneficiary under the trust, be protected against the consequences of unauthorised payment out of the bank account in which the trust funds are being deposited?**
- 8) If the owner makes one payment in satisfaction of a progress claim by the head contractor which includes monies due to the contractor and the subcontractor what is the appropriate mechanism by which the head contractor is properly paid?**
- 9) How can one determine what is owing to the subcontractor in the progress claim forwarded by the head contractor to the owner?**
- 10) Are there any significant tasks or additional costs associated with the construction trust procedure? For example should those funds be placed in a separate trust account and**
- 11) What, if any, is involved for the owner in this process.**

12) What is to happen if there are insufficient funds in the trust account to pay all of the subcontractors? For example, can the head contractor decide, at its discretion, which subcontractors to pay in the event of a shortfall?

Regarding the above points, AIB remains sceptical with the proposal of a trust fund. Builders would still have to pay subcontractors, so paying 60 percent of their funds to trust funds would not work. Governments do not pay to trust funds, so it would be inequitable for companies to do so. The proposals seem to be leading down a path where builders may end up just be paid a management fee for their work, which would be completely unsatisfactory. Put simply, if there is no risk, then there is no profit. If there was no scope to make profit by builders and subcontractors, then there would be no reason to have subcontractors rather than employees. If a trust fund scheme did eventuate, then it should be operated and paid for by developers, not builders. A fund like rental bond board scheme as mentioned in AIB's prior submission could be acceptable, subject to seeing a detailed proposal. However, AIB is sceptical that any 'ring-fenced' funds would remain 'ring-fenced' from future cash-strapped NSW Governments.

The Inquiry suggests that the key provisions upon which interested parties may wish to comment to the Inquiry are set out on the previous page. This is not to suggest a reading of the whole Act is not essential and any comments which readers may have upon any provisions of the Act and its likely suitability if applied in NSW are welcomed.

AIB does not have any comment on this at this point in time.

Contractors and subcontractors experience in working within the Queensland framework is sought, in particular views on its effectiveness in better ensuring that builders in the industry have an appropriate capital backing, commensurate with the costs and risks of the project.

AIB does not have any comment on this at this point in time.

Further Information

For further information, please contact the AIB Chief Executive Officer or Policy & Advocacy Manager on (02) 6247 7433 or ceo@aib.or.au or policy@aib.org.au

Appendix 1



Australian Institute of Building Submission to the *Inquiry into Construction Industry Insolvency in NSW*

Introduction

The Australian Institute of Building (AIB) welcomes the opportunity to respond to the *Inquiry into Construction Industry Insolvency in NSW*. The AIB is keen to see more efficient and thorough security of payment legislation, and welcomes this review.

Vision

The vision of the AIB in regards to this review is to ensure that:

- The building sector in NSW is improved through higher educational standards;
- The building industry is a viable and growing sector for the benefit of the state, consumers and builders; and
- Builders and sub-contractors are informed, educated and provided with adequate legislative protection and support, to reduce payment disputes.

Terms of Reference

The Terms of Reference will be answered in order.

As stated in the terms of reference: “The construction industry in NSW has a high rate of insolvency. The industry accounts for fifteen per cent of businesses in NSW, but up to thirty per cent of the companies going into administration. The government is concerned about this high rate of insolvency and the impact it is having on the community, small businesses, the NSW economy and the government’s construction program. The government is establishing an independent inquiry to:”

1. Assess the extent and cause of insolvency in the construction industry.

The background to the recent activities in the construction industry in NSW is as follows:

- The state of the NSW economy has been depressed for more than 10 years, whilst the remainder of the country has thrived;

- The Global Financial Crisis struck in 2008 causing lockdown of financial institution lending;
- Construction workload retracted even further;
- Heavy price discounting starting with sub-contractor discounts then followed by deterioration of main contractor's margins; and
- Smaller unqualified contractors have attracted to larger projects by clients seeking lower construction pricing, these contractors include lower overhead and underestimated preliminaries essential for larger projects.
- The depression of the construction industry has promoted an unfair transfer of risk to main contractors, where main contractors need the work and feel forced to take on more risk on projects through inequitable contract conditions. Examples include full risk of weather at no cost or time and full risk of prior design novation with no recourse to costs for inherited prior design by others. This risk is transferred to sub-contractors by main contractors in an attempt to spread their risk. The current allocation of risk to main contractors and sub-contractors is unfair and inequitable.

The two outcomes of the above have been:

- Projects being run with inadequate systems, procedures and most importantly supervision; and
- Larger more suitable contractors cutting preliminaries and undertaking projects purely for turnover with no profitability. This practice is not only in the relationship between the principal contractor and the client but also reflected between the main contractor and its subcontractors.
- Unfair transfer of risk to main contractors and sub-contractors.

The culture of specialist sub-contracting has been fundamental in the construction industry since the 1970s, to assist in both specialist skills focus and management of human resources, and must be retained.

There has been an apparent policy by Government to allow unskilled foreign nationals to operate and to set up building/development companies in Australia. This has been highlighted in Sydney and Newcastle over recent years. These companies often do not have the same ethics or cultural practices as established local contractors and they have demonstrated that they are prepared to deliver their projects well below the allowable standards as required by the National Construction Code and Building Code of Australia. These companies are also prone to use 'sham contractors', have a track record of not paying local legitimate sub-contractors, and ultimately leave the country.

Unfortunately the established building industry is unfairly tarnished by the behaviour of these foreign companies, and the effect they have on local sub-contractors for non-payment of their invoices and their ultimate demise.

2. Consider payment practices affecting sub-contractors, existing protections for subcontractors and the impacts of insolvency on sub-contractors.

The larger contractors in the industry generally operate on payment terms mirroring their head contracts. These loosely result in sub-contractors being paid within the week following the head contract payment.

Typically a sub-contractor would submit his claim on the 25th of the month, the main contractor would follow with his head contract claim on the 30th, the head contract payment would then be made around the 30th of the following month, and subsequently the sub-contractor would be paid in the first week of the following month.

In summary, the main contractor is paid on 30 day terms whilst the sub-contractor is paid on 45 day terms. In justification:

- Sub-contractors account for these payment terms in their tender;
- The sub-contractors operate commensurate payment terms with their suppliers; and
- Heavily labour bias sub-contracts are often reduced to 14 day terms.

The growing concern amongst the sub-contractor network regarding the claimed non-payment by contractors resulted in the introduction of the *Building and Construction Industry Security of Payment Act 1999*.

In the early years of introduction, this had a major impact on the contractor's ability to manage sub-contracts, as there emerged a practice of lodgement of inflated claims and a serious lean towards findings in favour of the sub-contractor. With costly avenues of recovery in late 2011, an amendment to the act saw the introduction of a mechanism for sub-contractors to approach principals directly and enforce the withholding of the main contractors payment where a claimed dispute existed between the sub-contractor and the main contractor. This had a compounding impact on the main contractor, as now a security of payment claim by the sub-contractor will likely be upheld resulting in payment, and the principal will also likely be withholding payment causing a doubling effect on the main contractors cashflow.

It is relatively simple to set up a business, but most tradespeople do not know about the Security of Payment (SOP) Act. Also, often if a tradesperson makes a claim under the SOP Act, then they are not used again by that company again, as they are perceived to be a 'trouble-maker'. Many sub-contractors unfortunately do not realise that they are in business, and do not have appropriate business practices in place. Business skills are needed to be built into the Certificate IV in Building. An important point is that businesses rely on cashflow and 'cash is king'. Given these facts it becomes very problematic if a client cannot or will not pay. It is essential that SOP legislation is put in place to protect builders, as well as sub-contractors.

Generally, current SOP legislation is designed to protect sub-contractors, except on individual dwellings. Also, there are currently no business skills built into TAFE trade courses, or experience.

3. Consider legislative or other policy responses that can be taken to minimise the incidence and impact of insolvency in the industry, including:

a.) Options for improving the priority given to unsecured creditors where the debt results from a sub-contracting relationship

Legislation could be considered to move wages and salaries to the top of the secured creditors ranking, ahead of lenders and administrators/liquidators.

However, currently this is not possible because according to the 'Hierarchy of Liens and Charges', the Australian Tax Office (ATO) is the first to be paid, followed by secured creditors such as banks are the next to get paid, then employees, then unsecured creditors.

A compensation fund is an option to 'bail out' sub-contractors. This could change the status of sub-contractors to secured creditors, but then employees may not be paid what is owed to them in the case of business becoming insolvent 'not having done the right thing' (if not outright fraud by the employer) by its employees.

b.) Opportunities to simplify debt collection processes

As with a.), currently the hierarchy of creditors is an issue. If \$50 million is owed to creditors when a construction company goes into administration and the company has \$10 million in assets, it is the ATO and secured creditors which will receive most if not all the value of these assets before any unsecured creditor (e.g. a sub-contractor). Thus, there is usually simply no money left to be collected by a sub-contractor.

The fact that the banks are one of the 'first in line' seems completely unfair to a reasonable person, as banks are more than able to withstand the loss as opposed to a small family-run business. Banks also penalise the affected party with unrealistic interest charges and in the case of foreign banks, they are able to recoup their losses through government backed guarantees. These options are not available to contractors who take the entire risk.

c.) Strategies to improve financial management skills in the industry

Strategies to improve financial management skills in the industry are definitely worthwhile, and should to be introduced at the point of licensing and in qualifications. Builders need to know more about business skills than architects. Architecture and engineering degrees simply do not focus enough on management. If they did, then they would closely resemble the construction management degrees that the AIB has been accrediting for some 50 years.

Licensing in NSW is seen as a major contributing factor in the financial administration of both contractors and sub-contractors.

Firstly, apart from the electrical and plumbing trades there is no requirement to hold a contractor's licence unless works involve residential construction. In other states, such as Queensland, there exist different licence classifications, and more rigorous criteria to obtain, including detailed business plans and declaration of financial capabilities resulting in restrictions on turnover. Furthermore, even in the case of the other trades, there is no work experience (i.e. even apprenticeship experience) required to obtain a trade contractor's licence. Both of these should be immediately rectified in order to ensure that subcontractors do not continue to go into insolvency due to technical incompetence.

As a consequence, tradesmen should also have to obtain a Cert IV in Building and Construction (as the relevant business training cannot and should not be added to detriment of ensuring technical competence) in which there is a relevant focus on financial skills and legal concepts.

d.) A mandatory insurance scheme to secure payments to sub-contractors

There already exists industry-based credit insurance providers. Adoption is voluntary, and it should remain voluntary. Ultimately consumers have to pay for this, and it should not be paid for by the taxpayer.

e.) A discretionary mutual fund to compensate contractors from losses arising from insolvency of a lead contractor or principal

At this point in time, AIB does not have a position on this matter. However, any possible scheme of this nature should not deter investment.

f.) The effectiveness of trust arrangements in protecting sub-contractor payments retained by a lead contractor or principal

The practice of insolvent contractors relying on employees' entitlements and sub-contractors retention monies in everyday cash management of their business is known to exist in the industry.

To protect employees and sub-contractors, the inquiry should consider:

- For employee entitlements, the establishment of secure trust savings funds similar to those existing for superannuation, and long service; and
- For subcontractor retention monies, a trust fund similar to that established in the residential rental market for the security of bond monies.

g.) Mechanisms to ensure appropriate and effective financial disclosure between contracting parties, including disclosing payment of sub-contractors

AIB supports this initiative, and believes that transparency is always preferable.

h.) Other relevant issues or innovations raised by the Small Business Commissioner or stakeholders.

AIB does not have any comment on this at this point in time.

4. In developing recommendations the inquiry should consider the impact of Commonwealth jurisdiction over insolvency.

Currently, the Commonwealth has jurisdiction over insolvency of companies, and the bankruptcy of individuals (whether or not they are sole traders or partnerships). The Commonwealth will have to have some role over building insolvency legislation in what is thought to be several years' time. AIB does not have a view on Commonwealth jurisdiction over insolvency legislation.

5. The inquiry will receive advice from an industry reference group including industry key associations and the Small Business Commissioner.

AIB supports this initiative. However, the industry reference group should also include the Fair Trading Commissioner. AIB would be well qualified to nominate appropriate professions for this taskforce, and to give advice as needed.

Further Information

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Appendix 2

About the AIB

Founded in 1951, the AIB is the peak body for building and construction professionals, acknowledged for its ability to bring individuals together who share a common interest in improving the standing of the building profession and their career within Australia and overseas.

The AIB was incorporated by Royal Charter in 1969 and is the pre-eminent professional body for building professionals in Australia and the Asia-Pacific region.

Recognised as the accrediting body for building and construction degrees at educational institutions, the AIB has a long and proud history of supporting and servicing the building profession. For more than sixty years, the Institute has worked with the building and construction industry, government, universities and allied stakeholders to promote the building profession, support the development of university courses in building and construction whilst promoting the use of innovative building techniques and a best-practice regulatory environment.

The AIB also has an extensive continuing professional development program in Australia and overseas and facilitates the annual AIB Professional Excellence in Building Awards Program.

Unlike the various industry associations which service the building and construction sector, only individuals (as opposed to businesses) may join the AIB - for example senior (if not venerable) construction firms such as Hansen Yuncken may be a member of the Master Builders Association, but its two most recent Executive Chairmen, Peter Hansen OAM and Peter Kennedy, are both Fellows of the AIB (and the latter is also National President of Master Builders Australia).

Similarly with firms known as the 'majors', whilst the firms themselves may be members of the Australian Constructors Association, both Murray Coleman OAM (former Global CEO of Bovis Lend Lease) and Mr Wallace King AO (former Executive Chairman of Leighton Holdings) are also Fellows, as are among many other industry notables along with the senior management and project managers of most (if not all) of the nation's leading construction firms.

It has been custom for each State's outgoing Chapter President to present a report to his/her Governor as to the state of the building (including: construction and project management; quantity surveying; building surveying and certification; and property and facility management) profession during their tenures, and to present their successor's to their Excellency's.

The AIB has been accrediting building, construction and construction management degrees (as distinct from architecture and engineering degrees - at both Bachelor and Master degree level) for some fifty years. These degrees major in Construction Management, Quantity Surveying, Valuation, Building Surveying, and Facilities and Property Management.

The universities which conduct AIB accredited and endorsed degrees (including double bachelor and master degree programmes) include:

- Central Queensland University
- Curtin University of Technology
- Deakin University
- Holmesglen Institute
- Queensland University of Technology
- RMIT University
- University of Canberra
- University of Melbourne
- University of New South Wales

- University of Newcastle
 plus its distance education degree in Tasmania
- University of South Australia
- University of Sydney
 specialist Master degrees in building services
 and facilities management only

- University of Technology Sydney.

Whilst the accreditation is pending for the programme at

- University of Southern Queensland;

With the re-accreditation of the programme at the University of Western Sydney expected to be announced in forthcoming months.

At each of these universities we conduct the *AIB Address*, a brief annual oration designed to bring to the fore issues which may not normally be associated with the building profession - be they construction/project managers, quantity surveyors, building surveyors/certifiers or property/facility managers. Past speakers have included:

- **The Honourable Sir Laurence Street AC KCMG QC HonFAIB**

Former Chief Justice and Lieutenant Governor of New South Wales:
'The Role of Mediation in the Settlement of Building Contract Disputes'

- **The Honourable Sir Llewellyn Edwards AC**

Former Deputy Premier, Treasurer of Queensland and medical practitioner
who commenced his career as an Apprentice Electrician:

'The Role of the Building Industry in a Buoyant Economy'

- **The Honourable Sir James Gobbo AC CVO QC**

Former Justice of the Victorian Supreme Court and Governor of Victoria:
'Skills Shortages in the Building Industry and the Role of the ISS Fellowship'

- **Colonel Ian Cumming CSC RAE FAIB**

Commanding Officer 1st Combat Engineering Regiment Aceh Tsunami Relief:
'The Aceh Tsunami Relief: Total Project Management'

- **Sir Eric Neal AC CVO HonFAIB**

Chancellor of Flinders University,

Former Governor of South Australia and former Chairman of both Boral and Westpac Bank,

who commenced his career as an Apprentice Plumber:

'Management in the Building Industry: from Technical through to General Management'

- **Sir John Holland AC HonFAIB (vare)**

Founder of the John Holland Group, and Colonel WWII North Africa and Special Operations:

'Building: One of the Noblest of Professions'

- **Lieutenant General Ken Gillespie AC (Mil., AO) DSC CSM**

Chief of Army, and former Deputy Chief of the Australian Defence Force,

who commenced his career as an Army Apprentice Bricklayer:

'A View from the Top, Military Building and Engineering: a Personal Experience'

- **The Honourable Terence Cole AO RFD QC**

Federal Royal Commissioner into the Australian Building Industry,

Chair of the Enquiry into the Australian Wheat Board's sales to Iraq,

Former Justice of the New South Wales Supreme Court

and Commodore of the Royal Australian Navy:

'Construction in the 21st Century: Understanding Risk'

- **James Service AO (AM) HonFAIB**
Deputy Chairman of Australand,
Chairman of the Australian National Museum Construction Committee,
Former Chairman of the Australian Capital Territory Energy and Water Authority:
'Builder, Heavy Hitter or Paper Shuffler: What is Your Life's Aim?'
- **Janet Holmes a' Court AC (AO) HonFAIB**
Chairman of the John Holland Group and
Chairman of the West Australian Symphony Orchestra:
'The Role of Culture in Safety'
- **Professor Murray Coleman OAM FAIB**
Then Global CEO of Bovis Lend Lease (now Lend Lease),
Professorial Fellow (Building and Construction) at the University of Melbourne
Adjunct Professor (Building and Construction) at the University of New South Wales;
and
Former Commissioner Construction Work Skills(UK):
'The Construction Industry and Sustainability - Saints and Sinners'
- The Australian and former Chief Scientist of the UK,
Professor Lord May (Robert MacCredie May) of Oxford OM AC Kt HonFAIB FRS
Copley Medal recipient (as were Captain James Cook RN and Benjamin Franklin);
Professor at [Sydney](#), [Princeton](#), Oxford Universities and the [Imperial College London](#),
both:
'Re-Thinking the Dynamics of Financial Networks'
and:
'Climate Change: Facts, Uncertainties and Appropriate Actions in the Aftermath of Copenhagen'
- **Dr Harry Triguboff AO (AM) PhD (Honoris Causa – both Griffith Hebrew University)**
Founder of the Meriton Group:
'Reflections and Recollections from a Challenging and Successful Career as a Builder'
- **The Honourable Sir Anthony Mason AC KBE QC**
Hong Kong Court of Final Appeal Justice,

Former Chief Justice of the High Court of the Commonwealth of Australia,
Former Justice of the Supreme Court of New South Wales,
Former Solicitor General of the Commonwealth of Australia:
'Liquidated Damages and Penalties in Building Contracts'

- **Major General Aziz Gregory Melick AO** (Mil., and AM) **RFD SC**

Chairman of the Enquiry into the Beaconsfield Mine Collapse,
Chairman of Cricket Australia's Enquiry into Corruption,
who commenced his Army career as a Private:
'The Role of Leadership and Ethics in Management'

- **Dr Mukesh Haikerwal AO FRACGP**

President of the World Medical Association,
Former President of the Australian Medical Association:
'Healthcare in the New Age:'
'Building Technology in Care Delivery, OHS and Keeping the Work Place Safe'

- **Major General Michael Jeffery AC AO** (Mil.) **CVO MC**

Chairman of the Global Foundation,
Former Governor General of the Commonwealth of Australia,
Former Governor of Western Australia,
Former Commandant of the SAS Regiment:
'Combating Climate Change through Greening our Cities'

- **Lieutenant General, Professor Peter Leahy AC** (Mil., AO and AM)

Former Chief of Army,
Professor of Strategic Studies at the University of Canberra:
'Leadership, Management and Administration – What is the Difference'

- **The Honourable Mark Vaile AO**

Former Deputy Prime Minister (National)

Former Australian Minister for Trade

Former Federal Minister for Regional Development

'NSW Planning – Challenges for the Construction Industry'

- **The Honourable John Anderson AO**

Former Deputy Prime Minister (National)

Former Federal Minister for Regional Development

'Australia in Asia – Opportunities and Risks for the Construction Sector'

With the former Chair of the ACCC, **Graeme Samuel AC**; the former Chairman of Lend Lease, **Stuart Hornery AO**; the former Chief of Staff to the then Prime Minister the Honourable John Howard OM AC, **Senator Arthur Sinodinos AO**; the noted architect, **Professor Philip Cox AO LFRAIA PhD** – all also having not only agreed to deliver an *Address* but have also already committed to specific dates and venues next year.

The former Deputy Prime Minister, **the Honourable Professor** (and Reverend) **Brian Howe AO** was also to deliver *an Address* for us at UWS recently – but had to postpone due to pneumonia.

Indeed with have agreement from both the Federal Minister for Tertiary Education, Skills, Science and Research **Senator Chris Evans**; and the Assistant Governor (Economic) of the Reserve Bank of Australia, **Dr Christopher Kent PhD** – **but we are still to finalise the dates for these.**

We also developed and maintain ethical and professional standards of individuals in practice and education, provide graduate development programmes as well as the National Building Professionals Register, and this as per our accredited degrees are often cited by industry bodies (e.g. the Master Builders Associations of NSW and Queensland) when giving advice to their members about the standards to be met by the building and construction management cadets that they employ – they don't call up the standards of, or degrees accredited by, IEAust.

The AIB uniquely conducts a Professional Excellence in Building Awards programme (which uniquely requires the client to grant permission to enter) which rewards the technical and managerial skill in delivering projects to the specified quality, as well as to the contracted time and price. With several billions dollars' worth of projects entered in each State.

Past Presidents include industry icons such as Sir Manuel Hornibrook OBE FAIB, Sir Keith Morris CBE FAIB, Sir Albert Jennings FAIB (CQU honorary Professor) and Jack Hutchinson AM FAIB.

The AIB has had only nine (9) Honorary Fellows, these include:

- **His Royal Highness, the Prince Philip, Duke of Edinburgh KG KT OM AC HonFAIB;**
- **Sir Eric Neal AC CVO HonFAIB;**
- **Janet Holmes a' Court AC (AO) HFAIB;**
- **James Service AO (AM) HonFAIB;**
- **Sir Laurence Street AC KCMG HonFAIB QC;**
- **Sir John Holland AC HonFAIB (*vale*); and**
- **Professor Robert Lord May of Oxford OM AC Kt HonFAIB FRS (the Australian, Robert MacCredie May).**

With most recently:

- **Dr Kenneth Michael AC HonFAIB; and**
 - **Her Excellency, Professor Marie Bashir AC (AO) CVO HonFAIB**
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For more information about the Institute, our policies, history and role in society please see our website www.aib.org.au