
16th April, 2015

Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

RE: INSOLVENCY IN THE AUSTRALIAN CONSTRUCTION INDUSTRY

As a subcontractor in the Australian Construction Industry I felt the need to make a submission to this inquiry.

██████████ The director has been working as a bricklayer in the construction industry for approximately 37 years. We employ between ten and fifteen people including apprentices, bricklayers and labourers and work on projects mainly in the Hunter Valley but we also travel to the Central Coast, Sydney, Armidale and Gunnedah areas. Over the past few years the company has continually been hit by builders becoming insolvent. As a guide and a rough budget we now allow for at least three builders each year to become insolvent or become difficult to extract payments from. Unfortunately we are unable to guess in advance which builders will become insolvent or difficult and how much will be unpaid so this puts our company in the precarious position of at some time in the future maybe not being able to cover our own debts and falling into the insolvent category ourselves.

I will attempt in the following pages to cover the terms of reference in this submission as to how insolvency in the Australian construction industry has affected and continues to affect our company directly;

a. Amounts

The following builders and amounts are part of what we have lost as sub-contractors over the last couple of years. These individual amounts when not paid are substantial but when combined they become difficult to absorb and they begin to have a detrimental effect on our small business. These insolvencies or in the case of National Buildplan Group the Deed of Company Arrangement have not been finalised as at today's date so there is also the highly unlikely chance that we may receive a payment that is worth something.

- ██████████ \$39,815.29
- ██████████ \$38,901.54
- ██████████ \$ 3,185.80

b. Effects

As a small company in the construction industry these unpaid amounts are considered substantial and extremely damaging to the cash flow of the company. When these amounts are left outstanding on any project we are still required to pay our employees for their time and effort, the Australian Taxation Office still requires the payg tax for employees along with the Super Guarantee Levy and we are also required to pay our suppliers for any materials used on the projects. Top that off with having to pay workers compensation premiums of 9% on top of wages and superannuation and we have the beginnings of a financial crisis. The profit margin in the construction industry in our area is not high enough to cover continual losses so invariably someone misses out.

In our case that would be the Australian Taxation Office. At the moment I am in the rather nasty position of dealing with the Australian Taxation Office to arrange a payment arrangement to pay off a taxation debt. These negotiations are stressful and time consuming. I have found the most stressful aspect is the way I have been treated. I had the misfortune to be assigned an officer who was so rude and unknowledgeable that I was unable to speak with her. I was at the stage where I was prepared to take the insolvency option and become another insolvency statistic, and that was the best option I was thinking of. It took weeks of formal complaints and escalated complaints before I was allocated another officer who actually appeared to know what he was talking about. Unfortunately he has now left for another position and I have been allocated another officer that after only a couple of emails and one conversation seems to be in between the previous two. Time will tell how we fare and if a payment arrangement can be arranged.

In all of my dealings with the ATO they appear to treat individuals not as humans but as an abn or acn number. The problem is that many of the companies in difficulty are owned by individuals not multinational conglomerates. They are individuals with families and employees who are trying their hardest to make a living for themselves and to be able to pay their employees so they can support their families.

c. Causes

I can't explain why the insolvent companies we have dealt with became insolvent but I believe if our company becomes insolvent it will be related to my comments as noted above. Quite simply the amounts left owing will become too large to absorb and we will be forced into insolvency ourselves.

d. "Phoenix Companies"

There have been directors of companies in our area who have been insolvent one day and the director of a new company the next. Obviously the current laws are not adequate to prevent this happening and it is difficult to have faith in a system that is so flawed. It is also difficult when competing with these companies to believe that you are dealing with an honest individual.

e. Impact on Productivity

The only productivity that is affected in our case is my personal productivity. As the person left to deal with the effects and fallout of insolvent and difficult builders a ridiculous amount of time is spent with paperwork for administrators and debt collectors. The employees continue on to the next project and as long as they are paid they are oblivious to the fact we have not been paid for the last project.

f. Breaches of Corporations Law

Many of the companies must realise that they are in a precarious position but continue trading. Due to our unfortunate position of having dealt with so many insolvent companies you sometimes have a very strong feeling that a particular company is in financial difficulty. One example was Truway Group who continued trading to the very end. We discontinued work on projects when the payments became an issue but Truway Group just went out and hired other bricklayers, advising them that our work was inferior and that we weren't coming back on-site. When I questioned one of the office staff about whether he had advised the new bricklaying crew the real reason we were not on site he threatened to sue me. He must have had some idea of the financial situation at that stage.

g. Debt Collecting

In the past we have used the "Security of Payments Act" to recoup payments off difficult clients. This act is so complex and subject to changes that I have to pay someone else to use it. I just do not have the time to study it each time we require it. This then involves more expense and the hope that I have chosen the right person to work with.

This brings me to the part which upsets me most about any insolvency dealings and which I feel is anti-social and nearly unlawful. That would be the fees that the insolvency experts are able to charge when they are appointed to an insolvent company. If we were able to charge ourselves out at a quarter of the rate they charge I would not be preparing this submission.

h. Adequacy of Current Law and Regulatory Framework

Obviously the current laws and regulatory framework are blatantly inadequate and in need of a major shakeup. As they stand there is no disincentive for a company director to wind up his company, leaving a trail of debts and move on.

Which leads me to the question as to if the Taxation Office is able to apply a Director Penalty Notice on the director of a company to recoup outstanding PAYG debts why can't this type of action be used for all company debts.

i. Any Other Relevant Matter

- Fair Entitlements Guarantee Act
In many of the insolvencies we have been involved with the employees have been paid their entitlements through the Fair Entitlements Guarantee Act. Why shouldn't subcontractors be considered as important as an employee?
- Security of Payments Act
I know that there are changes happening with this Act but it needs to be simplified and builders need to be afraid of it.
- Subcontractors Statements
We are required to forward a Subcontractors Statement with all invoices to provide evidence that we have paid all remunerations to employees and I believe that builders also provide these types of statements to their clients before payments are made. What is the point of these statements if no-one checks to see if the statements are accurate. Maybe there should be more pressure put on the clients to check who is or isn't being paid on their projects. Especially Government and Government funded projects. It seems extremely unfair in some cases to see our tax dollars (when paid) spent on projects and then see ourselves providing free labour and materials when the builder becomes insolvent without paying us.

Should you require any further information or wish to discuss any of the above please do not hesitate to contact me on the above numbers.