

Submission

December 18, 2015

**Submission to the Treasurer, Hon. Tom
Koutsantonis MP**

Improving the South Australian Construction Industry



MASTER BUILDERS
SOUTH AUSTRALIA

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1. Introduction

This submission is made on behalf of Master Builders Association of South Australia Inc (“Master Builders SA”), established in 1884 as the peak body representing South Australia’s building and construction industry.

Master Builders SA is committed to building a productive industry and a prosperous South Australian community and economy.

The South Australian building and construction industry directly employs more than 55,000 South Australians across all sectors, including residential, commercial, civil engineering, land development and building completion services. Indirectly, the industry supports tens of thousands more South Australian jobs.

The industry undertakes about \$15 billion of work every year, contributing more than \$1 for every \$7 of economic activity within the State. Indirectly, more than one-quarter of South Australia’s wealth is produced by the building and construction industry.

South Australia’s building and construction industry is focused on the development and transfer of skills into a life-long career. It is consistently among the leading sectors when it comes to training and apprentices and last year provided new apprentice places for more young workers than the Northern Territory, ACT and Tasmania combined.

Master Builders SA is proud of the industry it represents, the jobs it creates, the 11,000 homes it built and extended for families last year and the offices it has built for South Australian businesses.

2. Purpose of submission

South Australia’s commercial building and construction sector is experiencing a significant slowdown. Despite a number of high-profile construction jobs including the New Royal Adelaide Hospital, only \$1.66 billion of activity was undertaken in the year to October 2015, 19.6 per cent lower than the annual average over the previous 10 years¹.

Public works have slowed significantly and there has been a rise in “hard money contracts” – tenders let on a single price with insufficient regard given to underlying quality and risks. With an influx of firms from interstate, this has led to a rush to the bottom, where slim and negative margins are tendered in the hope they can be recouped throughout the contracting chain. There has also been an apparent increase in poor payment practices that increase the risk of company collapse².

This is unsustainable and has produced significant company collapses with scope for more.

Upon hearing of these observations in July 2015, Treasurer Tom Koutsantonis invited Master Builders SA to produce budget-neutral reforms that might improve conditions for South Australia’s building and construction industry.

Master Builders SA convened a representative committee of head- and subcontractors to deliver reforms that would have a lasting impact. This document outlines key recommendations agreed upon by this group. Master Builders SA will continue to work with its members to deliver additional reforms

under this process including a focus on Security of Payments, licensing, and other areas of significance to the industry.

We offer this document as the beginning of a reform process and look forward to working with the State Government to implement changes that will make a fundamental difference.

3. Improving industry education

Trade training often provides basic business skills during apprenticeships but much of this knowledge is honed in practice. Unfortunately, many move straight from apprenticeships to running their own businesses and therefore lose the opportunity to learn these skills under the tutelage of an experienced business owner.

Recommendations

3.1. State Government to require contractor licence holders to demonstrate the equivalent of two years' practical business knowledge prior to setting up an independent business.

3.2. Commonwealth Government to allow apprentice loans to be made available for business training.

3.3. Master Builders SA to develop specialist business support packs and services to guide the creation of new businesses and the growth of existing businesses.

Training programs like Master Builders SA's Fast Track program (available to residential builders as a Certificate IV and commercial builders in a Diploma structure) are available but may not capture the experiential requirements of costings, quality control, contracting knowledge, cash flow, and so on.

A similar lack of business skills is becoming apparent with an influx of skilled immigrant labour. While technical skills may be beyond reproach, there is a period of adjustment when it comes to understanding the Australian regulatory environment.

In both cases, participants are likely to be exposed to greater business risk either through a lack of experience or due diligence. This, in turn, is likely to expose those businesses to their own risk of collapse.

Requiring greater practical business knowledge for licensing is likely to substantially reduce this risk and develop stronger businesses for the future.

Those apprentices wanting to extend their business knowledge to set up a business sooner should be able to access their Commonwealth Government-provided apprentice loans to fund their business education. While these funds may be used for tools, they should also be

used for tools of business. There have been examples of such funds instead being used for daily expenses but extending this to business skills will develop a stronger industry with better educated participants.

4. Licensing and prequalification

The building industry is primarily policed and qualified through its licensing system. At higher levels, licensing is an element considered in the State Government's prequalification process for assessing a licensee's capacity for publicly-funded work. There is an opportunity to combine these processes to require higher financial stability standards and improve the workability of the prequalification system at both national and State levels.

Recommendations

4.1. Builders licence renewal to require updated financial statements as a matter of course.

4.2. Holding of a builders licence to allow holder to opt in for prequalification for certain bands. This would allow participants to effectively opt out of certain markets but would also improve access to trades.

4.3. Commonwealth Government and States to introduce further bands beyond the current \$50 million limit for national prequalification.

4.4. All prequalification bands to be appropriately indexed at State and Commonwealth levels.

4.5. Businesses to be limited as to the number of national prequalification bands they can compete in.

Higher financial stability standards

Businesses seeking prequalification are required to provide audited statements every two years and undergo additional due diligence to ensure publicly-funded projects have access to suitable stable businesses. It is effectively an "opt in" process that Departmental officials have noted is leaving them with fewer suppliers as businesses choose not to compete for tenders or renew prequalification.

In contrast, businesses seeking a builder's licence are required to submit financial statements only when applying for that licence. Whereas the financial accounts of prequalified companies are reviewed every two years, we understand that there is no such review on licence renewal. Concern about this disparity is reflected in the Senate Economics Committee's recommendation of random financial health spot-checks³. Introducing regular reviews of financial stability would identify risks as a matter of course.

Combining prequalification and licensing requirements could set a higher standard for financial stability and also allow the combination of two functions from a staffing perspective. It would also allow for the graduated assessment of licence holders as recommended by the Senate Economics Committee⁴.

Improving national prequalification

South Australian businesses are missing out on national opportunities because of the current stratification of prequalification. The current scheme only offers bands of activity up \$50 million. A business can move into higher categories but once in the top tier is competing against companies that have delivered projects costing hundreds of millions of dollars. Further stratification would help build capacity across the country.

Recommendations

4.6. Department of Planning, Transport and Infrastructure to work with Master Builders SA to assess potential reform and consolidation of the prequalification process without impacting commercial opportunities.

4.7. Commonwealth Government to accept successful project experience of lower value as evidence of capacity for higher value completion.

4.8. DPTI should retain financial records and assessments from previous prequalification applications to allow assessors to compare company results across review periods to better determine trends and assess risk.

4.9. Master Builders SA to work with DPTI to develop pre-assessment services to allow members to improve prequalification outcomes.

4.10. Prequalification ratings to be made publicly available so third parties including industry participants can better assess risk.

Current prequalification bands have not been updated to reflect the impact of inflation since their introduction in 2011. As a result, a project costing \$50 million and completed several years ago is not recognised for its contemporary equivalent when assessing prequalification. Indexing the bands to construction price indices would fix this.

Similarly, a business that has successfully delivered a project for \$70 million is likely capable of delivering a project valued at \$80 million, yet the current national prequalification system does not recognize this capacity. The lack of private projects of this value within South Australia necessarily disadvantages South Australian businesses on the national stage. Accepting the successful completion of a project at a lower value as evidence of capacity for an immaterially-higher value project would open up opportunities for South Australian companies.

The current environment has also created increased competition as larger companies seek to sustain their activity by looking for smaller projects across the country. A company qualified at the highest tier can operate at all lower tiers, where it is expected to enjoy a competitive advantage because of its greater experience. The lack of work in the current environment is seeing many businesses successfully tender for lower tiers of opportunities, taking work from small prequalified companies which have invested in their tender costs, increasing their risk.

South Australian prequalification

Prequalification can be improved to capitalize on the assessment work already being undertaken to identify business risks ahead of corporate collapse.

Prequalification is presently undertaken by DPTI to assess the risk and capability of an applicant, including their financial stability. This assessment is reviewed afresh every two years without reference to the former documents or assessment, and thus the adequacy of former conclusions or process cannot be confirmed.

It is understood this process includes reference to the quality and consistency of the work undertaken on each project but the occurrence of some high-profile building company collapses calls into question whether this is functioning adequately.

Recommendations

4.11. DPTI to introduce “Part B” project assessment for prequalified companies undertaking Council, university and private sector projects. Assessment format to be based upon existing public projects (“Part A”). Master Builders SA to assist with the development of robust assessment guidelines.

4.12. Results of Part B assessment to be published alongside existing (“Part A”) assessments for prequalified companies.

4.13. Master Builders SA to develop template for Part B assessment and guidelines for third party certification. Master Builders SA to work with DPTI to allow electronic uploading of Part B assessments.

4.14. Prequalification scores encompassing Part A and Part B assessments should be printed on certificates to provide trigger for companies to improve standing.

Assessors may differ between periods and have no ability to compare documents to determine a dangerous trend that might be developing. It is suggested that retaining the results and documents from a company’s previous prequalification application may therefore bridge this gap.

This could be further enforced by publishing prequalification ratings so third parties can assess risk.

Many third parties including industry participants view DPTI prequalification as a form of due diligence. As they do not have access to internal company information, they may choose to rely instead upon DPTI’s prequalification as a mark of that process. There is evidence, for example, that Councils and Universities are increasingly relying upon DPTI prequalification as a form of early assessment of business partners. While DPTI’s prequalification process is relatively thorough and incorporates post-project assessment, the limited number of public projects captures only a small part of a company’s capacity. In turn, this leaves fewer opportunities for regular and contemporary assessment

There therefore exists an opportunity to allow broader access to prequalification results by gathering feedback from non-DPTI projects to provide clients, builders and subcontractors with more information on a greater range of projects. This could be introduced as a “Part B” assessment for non-government projects to accompany public project “Part A” assessments. This would allow businesses to have the benefit of assessment of outcomes on tertiary, Council and private projects and provide greater due diligence for all industry participants.

Part B assessments could be undertaken by project control groups, certified by a relevant third party and then electronically uploaded to DPTI for a fuller appreciation of a company’s standing and performance.

5. Tendering and contracting

Members of Master Builders SA have observed that tendering and contracting are presently some of the

greatest contributors to industry stress. Poor contract conditions leave little room for error and the culture of tendering is leaving little scope to develop sustainable businesses.

We observe there are three main areas requiring improvement from an industry perspective.

Form of contract

The Department of Planning, Transport and Infrastructure (DPTI) has developed a reputation within industry for pursuing “hard money” contracts where the price of a tender is seen as the dominant factor in determining tender outcomes. Some builders and contractors are tempted to cut margins to win the work, hoping to recover a sustainable business through variations.

This is clearly unsustainable.

Recommendations

5.1. State Government to instruct DPTI to undertake management contracts wherever appropriate.

5.2. State Government to instruct DPTI to review the long-term costs of contracts including variations and repairs to develop a “long-term contract cost”. This is likely to inform and improve future tendering practices to develop a more sustainable industry.

5.3. Non-standard contracts to be used only where necessary for a project outcome. Unreasonable transfer of risks to be avoided.

Master Builders SA has also been told that Defence projects and public works in New South Wales rely on managing contracts without creating higher costs, whereas there have been South Australian examples where quality and service has been emphasized – only for the contract to be awarded to the cheapest tender. The practice of relying upon the cheapest tender price often results in a higher overall cost to taxpayers once rectification costs are considered.

Master Builders SA believes there is scope for DPTI to re-evaluate this practice to support a more viable industry.

Move away from standard contracts

Principals are increasingly expecting contracts that are hundreds of pages long, even when based on the industry standard contract (ASO4000). However, this extends the need for independent review and increases the cost and complexity of contracting. At a time when activity is slowing, some builders and contractors may be tempted to overlook complexities to win work. This makes them more likely to accept bad deals and increases risk of company collapses.

Master Builders SA has been told that DPTI is pursuing this “east coast mentality” and local government contracts

are widely described as “terrible” based on their tendency to amend standard contracts to an extent where they are virtually unrecognizable.

In addition, standard contracts with major changes are being sent without being clearly marked up. This increases the risk of collapse as businesses desperate for work may fail to properly price risk they are accepting.

Industry concerns about the predicament faced by subcontractors in the current climate sparked a proposed amendment to DPTI's Code of Practice for the Construction Industry. The document, Best Practice for Subcontractor Engagement, emphasizes the rights and abilities of the Principal (in this case, DPTI) to ensure fairness is at the heart of all commercial dealings. This document has been

Recommendations

5.4. DPTI to urgently adopt amendments to the Code of Practice as recommended by the Construction Industry Forum.

5.5. DPTI to be further resourced to enable more active auditing of contractual provisions as allowed for in the existing Code of Practice.

5.5. Office of the Treasurer to work with the Office of the Local Government Minister and the Local Government Association to support the use of standard contracts for all local government projects.

endorsed by the Construction Industry Forum but is waiting on DPTI for adoption. Master Builders SA recommends this be done as a matter of urgency. Master Builders SA is willing to work with DPTI to identify areas where a more active engagement may result in better industry and taxpayer outcomes. This may require additional resources to properly adopt the role of being a model client.

In so far as councils are adopting these practices, Master Builders SA requests that the Office of the Treasurer work with the Office of the Minister for Local Government and the Local Government Association to support the use of standard contracts for all local government projects.

Client pricing models

The present focus on the lowest price is delivering projects reliant upon narrow or negative margins where the risk is pushed on to subcontractors and/or made up for in rectification works that produce lengthy and costly disputes.

Much of this can be avoided through a review of the contract form and a return to standard contracts where possible, as discussed above.

Master Builders SA urges the State Government to be aware of the shortcomings of largely relying upon price alone to assess contract performance. Further data should be made available to track the long-term cost of rectifications and variations to give a full project cost. This data should be compared to original contract pricing to further inform commercial decisions going forward. It is submitted that this will deliver better project outcomes without sacrificing taxpayer value.

6. Increased security

The Senate Economic Committee's inquiry into Insolvency in the Construction Industry has heard a number of suggestions to improve security in the industry. Consultation with members – including head- and subcontractors – has highlighted the practical shortcomings and likely ineffective outcomes of some of these propositions. However, we do believe it possible to utilize the Personal

Properties Securities Register (PPSR) and an industry push for greater use of bank guarantees to better protect subcontractors in the event of the collapse of a head contractor. This is discussed below.

Centralised retention funds and trust funds

Subcontractors are required to transfer a certain level of funds during the course of a project to serve as a guarantee of the quality of work being undertaken. These funds, which are withheld from progress payments, are retained for a period of two years until the underlying work is seen to be free of defects.

In some cases, these funds have been utilized as working capital and, therefore, have not been made available to return to subcontractors in the event that a head contractor collapses. Although the creation of a centrally-administered fund or trust fund has been suggested as a means of protecting against such a collapse, they have been criticized as providing “no security whatsoever for subcontractors”⁵. Existing schemes provide no protection for subcontractors vis-à-vis other subcontractors⁶ and the Project Control Accounts recommended by the Senate Economics Committee⁷ impose significant compliance costs and demands without promoting subcontractor security over their funds. Members of Master Builders SA currently involved in the Western Australian trials of Project Bank Accounts have provided early feedback as to the difficulties and costs of administering the accounts and the limited protection offered to all participants. Master Builders SA will provide more detailed feedback in due course.

Master Builders SA believes this device would create difficulties for all industry participants. The size of the fund would require significant administration, the costs of which would be deducted from available funds and revenue. Further, payment difficulties and delays are likely if the central processing of the Building Education Revolution is to be taken as a guide.

Further, these funds must be retained two years from completion until the defects period has ceased. As a result, subcontractors are unlikely to get funds quicker and the administrator of a centralized fund would need to have a rolling reconciliation of millions of dollars of contributions, and be liable for any late return of funds to the thousands of contributors. There may not be an appetite for additional public spending on what is currently managed in the private sphere.

In the event of a subcontractor collapse, liquidators would lay claim to the funds in question and would likely have to sue the fund to gain access. Builders would also likely demand access to those funds to cover the costs of rectifying or completing subcontractor works.

Funds would need to be provided directly to the fund with work unable to be started until proof of receipt had been provided to all parties (client, builder, subcontractor), thus adding an additional administrative burden on the management of the fund.

In short, Master Builders SA is not convinced that a centrally-administered fund would improve industry outcomes.

Recommendations

6.1. State Government and Master Builders SA to support, educate and encourage the use of bank guarantees and surety bonds in the place of cash retentions.

6.2. State Government to investigate the development of underwriting bank guarantees or surety bonds in a commercial sector equivalent of its involvement in Builders Indemnity Insurance for the residential building sector.

6.3. State Government to investigate requiring bank guarantees or surety bonds in place of cash retentions for all projects either through legislation or Codes of Practice.

6.4. State Government to investigate legislating to prohibit the passing through of bank guarantees.

6.5. Commonwealth Government to amend the Personal Properties Securities Act 2009 to extend to interests including retention funds and the accounts in which they are held where such funds are provided in the source of building contracts and works.

Centralised levy

Some organisations have proposed a levy be paid on all developments to create a pool of funds for those businesses that lose money from a corporate collapse in the construction sector.

This would increase the cost of building, place greater pressure on builders to cut margins, which would then accelerate the need to find savings in other areas to cover that cost. In turn, this risks increasing tensions between industry participants as all seek to cover the additional cost.

There remains a question of equity: if a business is able to recover funds despite having access to all information and due diligence that showed a high level of project risk, they are more likely to ignore project risk in the future and thus expose their own suppliers to that risk. This will disadvantage those businesses that are contracting in good faith and with due appreciation of the pricing of risks.

In the long term, this will create an industry with more risk and less stability – contrary to the aims of this measure.

Further, the fund itself would likely be targeted by liquidators seeking to access funds for creditors.

Master Builders SA believes a levy would increase the cost of building, reduce the level of economic activity and jobs and promote poor business practices.

Increased security – bank guarantees and surety bonds

Cash retentions are an unnecessary drain on the working capital of a business and, as the most liquid of assets, present a high level of risk in the event of corporate collapse.

Many businesses instead rely upon bank guarantees or surety bonds to limit financial risk in the event of builder collapse and to reduce the demands on a contractor's capital base.

There have been reports of companies “passing through” such guarantees – using received guarantees and passing them through in place of their own guarantee.

This allows a company to extend its own commitments without securing the commitments given to it. In the interests of transparency, this practice should be discouraged or banned.

However, bank guarantees or surety bonds may not be available to all contractors or businesses. In particular, smaller businesses may not have the capital base to secure such a guarantee. Ironically, these are the companies most at risk in the event of corporate collapse. The State Government could support such guarantees through a scheme akin to that behind the provision of Builders Warranty Insurance. It is envisaged that exposure could be limited to those without other options. The State Government could recover its costs on a commercial basis.

Increased security – Personal Properties Securities Register (PPSR)

The Personal Property Securities Register (PPSR) provides contractors with a notifiable security interest over equipment and has been used to quarantine assets from liquidation to provide dividends in the event of a liquidation. It does not safeguard funds or bank accounts.

Every business should be required to have a defined retentions account in which it holds retentions funds received. Amending the PPSR legislation to extend to retention funds and their accounts would allow contracting parties to register their interest against the account.

This effectively quarantines any dealings with these funds subject to those interests. In particular, it would protect the funds from being distributed as an asset of the business and allow contractors to improve their standing from unsecured to secured creditor in the event of corporate collapse. Although this may not ensure funds are completely protected, it would vastly improve protection for minimal cost and minimal intervention.

Master Builders SA will further investigate this option in terms of education and required legislative changes in the event the State Government is supportive of the proposal. We note that the relevant legislation is a Commonwealth Act; we will raise these issues with the Federal Government but would appreciate further support from the State Government.

7. Contract execution – timing of variations

Recommendations

7.1. State Government to adopt contractual practice of using quantity surveyor to determine binding cost of variations within a monetary limit within a limited time frame so as to limit project delays and payment disputes.

Many contractors (including subcontractors) face losses on variations because clients demand work done on variations but do not authorise the work at a later stage. This is particularly prevalent in some sectors (e.g. retail) and is widely considered a catalyst for the collapse of Tagara Builders.

A mechanism is needed for prompt authorisation and costing of variations to avoid the need to seek court approval for the value of work done (*quantum meruit*) or additional losses to be borne by all parties.

Contracts should allow parties to appoint a quantity surveyor with authority to approve variations to a certain monetary limit. This would allow an expert determination

within a time frame to both avoid delays and improve financial outcomes for all parties.

The State Government is the largest client in South Australia and has a role to play as a model client. The variations on government projects are likely to be significant and, therefore, avoiding delays relating to the timing of variations is likely to deliver credible examples of the benefit of this practice.

Master Builders SA would also promote the benefits of such practices to all members.

8. Summary of Recommendations

Improving industry education

State Government to require contractor licence holders to demonstrate the equivalent of two years' practical business knowledge prior to setting up an independent business.

Commonwealth Government to allow apprentice loans to be made available for business training.

Master Builders SA to develop specialist business support packs and services to guide the creation of new businesses and the growth of existing businesses.

Licensing and prequalification

Renewal of builders licences to require financial statements as a matter of course.

Holding of a builders licence to allow holder to opt in for prequalification for certain bands. This would allow participants to effectively opt out of certain markets but would also improve access to trades.

Commonwealth Government and States to introduce further bands beyond the current \$50 million limit for national prequalification.

All prequalification bands to be appropriately indexed at State and Commonwealth levels.

Businesses to be limited as to the number of national prequalification bands they can compete in.

Department of Planning, Transport and Infrastructure to work with Master Builders SA to assess potential reform and consolidation of the prequalification process without impacting commercial opportunities.

Commonwealth Government to accept successful project experience of lower value as evidence of capacity for higher value completion.

DPTI should retain financial records and assessments from previous prequalification applications to allow assessors to compare company results across review periods to better determine trends and assess risk.

Master Builders SA to work with DPTI to develop pre-assessment services to allow members to improve prequalification outcomes.

Prequalification ratings to be made publicly available so third parties including industry participants can better assess risk.

DPTI to introduce Part B project assessment for prequalified companies undertaking Council, university and private sector projects. Assessment format to be based upon existing public projects (“Part A”) and Master Builders SA to assist with the development of robust assessment guidelines.

Results of Part B assessment to be published alongside existing (“Part A”) assessments for prequalified companies.

Master Builders SA to develop template for Part B assessment and guidelines for third party certification. Master Builders SA to work with DPTI to allow electronic uploading of Part B assessments.

Prequalification scores encompassing Part A and Part B assessments should be printed on certificates to provide trigger for companies to improve standing.

Tendering and prequalification

State Government to instruct DPTI to undertake management contracts wherever appropriate.

State Government to instruct DPTI to review the long-term costs of contracts including variations and repairs to develop a “long-term contract cost”. This is likely to inform and improve future tendering practices to develop a more sustainable industry.

Non-standard contracts to be used only where necessary for a project outcome. Unreasonable transfer of risks to be avoided.

DPTI to urgently adopt amendments to the Code of Practice as recommended by the Construction Industry Forum.

DPTI to be further resourced to enable more active auditing of contractual provisions as allowed for in the existing Code of Practice.

Office of the Treasurer to work with the Office of the Local Government Minister and the Local Government Association to support the use of standard contracts for all local government projects.

Increased security

State Government and Master Builders SA to support, educate and encourage the use of bank guarantees and surety bonds in the place of cash retentions.

State Government to investigate the development of underwriting bank guarantees or surety bonds in a commercial sector equivalent of its involvement in Builders Indemnity Insurance for the residential building sector.

State Government to investigate requiring bank guarantees or surety bonds in place of cash retentions for all projects either through legislation or Codes of Practice.

State Government to investigate legislating to prohibit the passing through of bank guarantees.

Commonwealth Government to amend the Personal Properties Securities Act 2009 to extend to interests including retention funds and the accounts in which they are held where such funds are provided in the source of building contracts and works.

Contract execution – timing of variations

State Government to adopt contractual practice of using quantity surveyor to determine binding cost of variations within a monetary limit within a limited time frame so as to limit project delays and payment disputes.

9. Conclusion

The recommendations within this document are intended to improve the health of South Australia's building and construction industry with minimal impact on the State Budget. Improved margins are likely to benefit the industry as a whole, as is increased economic activity, but these proposals are aimed at protecting industry participants from the impact of company collapses.

Master Builders SA has based this submission on input from its members, leading industry figures and specialist staff, and thanks those parties for their valuable contributions. Additional work will be undertaken to focus on significant reforms regarding Security of Payment and other areas of importance to the sector, and these will be delivered to the State Government as they are completed.

Master Builders SA will pursue these recommendations with the State and Commonwealth Governments and with other regulatory participants, and looks forward to discussing it further as soon as possible.

Master Builders SA is the peak body representing the State's building and construction sector and the 55,000 jobs it creates. We would appreciate every opportunity to contribute the benefit of that knowledge and experience in any ongoing industry consultation.

¹ Australian Bureau of Statistics, Building Approvals (8731.0), December 2015, Table 15. Available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/ProductsbyReleaseDate/0545FFC6A101264DCA25719F007F6F1F?OpenDocument> (accessed December 2, 2015).

² See, for example: Moss, Alan (Ret. Judge), Review of Building and Construction Industry Security of Payments Act 2009 (SA).

Available at:

<http://www.parliament.sa.gov.au/HouseofAssembly/BusinessoftheAssembly/RecordsandPapers/TabledPapersandPetitions/Pages/TabledPapersandPetitions.aspx?TPLoadDoc=true&TPDocType=0&TPP=53&TPS=2&TPItemID=141&TPDocName=Building%2bAnd%2bConstruction%2bIndustry.pdf> (accessed December 10, 2015).

³ Senate Economics Committee, Insolvency in the Australian Construction Industry, List of Recommendations, Recommendation 15. Available at

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Insolvency_construction/Report (accessed December 4, 2015).

⁴ Ibid, Recommendation 33.

⁵ See, for example: Davenport, Philip, "A Clayton's Trust", Adjudication in the Building Industry, The Federation Press, 3rd Edition, 2010. Available at: <https://www.federationpress.com.au/pdf/A%20Clayton's%20Trust.pdf> (accessed December 14, 2015).

⁶ Ibid.

⁷ Senate Economics Committee, Recommendation 29.