

INQUIRY INTO INSOLVENCY IN THE CONSTRUCTION INDUSTRY

TERMS OF REFERENCE

The construction industry in NSW has a high rate of insolvency. The industry accounts for fifteen percent of businesses in NSW, but up to thirty percent 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.
2. Consider payment practices affecting sub-contractors, existing protections for subcontractors and the impacts of insolvency on sub-contractors.
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
 - b. opportunities to simplify debt collection processes
 - c. strategies to improve financial management skills in the industry
 - d. a mandatory insurance scheme to secure payments to sub-contractors
 - e. a discretionary mutual fund to compensate contractors from losses arising from insolvency of a lead contractor or principal
 - f. the effectiveness of trust arrangements in protecting sub-contractor payments retained by a lead contractor or principal
 - g. mechanisms to ensure appropriate and effective financial disclosure between contracting parties, including disclosing payment of sub-contractors
 - h. other relevant issues or innovations raised by the Small Business Commissioner or stakeholders.
4. In developing recommendations the inquiry should consider the impact of Commonwealth jurisdiction over insolvency.
5. The inquiry will receive advice from an industry reference group including industry key associations and the Small Business Commissioner.

The government has established a taskforce to review government procurement and contract administration processes. The inquiry will also consider the work of this taskforce.

Given the role of the Australian Securities and Investment Commission, it is not the role of the inquiry to make findings in relation to particular incidences of company failure. However, examples of failure may inform consideration of policy and legislative options.

The inquiry will seek submissions from the construction industry, financial professionals, relevant government regulators and the public.

The inquiry will report within three months of being established.