ATTACHMENT A

Mr Jonathan Sive is a Barrister at Law and a senior adjudicator in all states except WA and the NT. Mr Sive specialises in construction matters and administrative law. He is an advocate for subcontractors and is a consultant to the Subcontractors Alliance. Please find attached relevant sections from Jonathan Sive's report prepared on behalf of the SA, for the Qld Minister for Housing and Public Works. [Attachment A]

"The allocation of resources between certain parts of the contractual chain gives rise to unbargained-for windfalls being achieved by the stronger party at the expense of the weaker party with one of the outcomes being the complete demise of the weaker party. This was before the unjustified amendments. For example, ASIC Report 225 Insolvency Statistics: External Administrators' Reports 1 July 2007 to 30 June 2010 showed (Table 8) that *Construction* was the industry most plagued by insolvencies with 1,905 or 24.1 per cent of all reports. What is more concerning is that most of these insolvencies directly relate to subcontractors with one of the significant causes here being "inadequate cash flow or high cash use". A further concern in this regard is that subcontractors, because of unequal bargaining power with respondents and with the government, have not been unable to achieve a position of security within the contractual chain. This is a determinative factor not to be overlooked. On page 75 of the same ASIC report, the statistical summaries show that when the creditor is secured in the construction industry, 72 per cent of the external administrator reports showed that "nothing was owed" to secured creditors (Table 53—category $0: Construction (1,281 reports out of a total of 1,760 reports)). Consumer sovereignty is undermined and this was of no concern to the previous Government or the cabinet Minister in proposing amendments that will make this dire situation for subcontractors worse."

The hierarchical structure identified above persists within the industry as an important socio-psychological phenomenon or stigma that impacts the subcontractor and supplier field of participants in how they generally conduct themselves when performing under a construction contract and is the social identity that creates a problematic culture within this field of participants, especially when the operation is small with a few employees or is just a one-man operation where the wife performs the bookkeeping.

The distinguishing characteristics of the subcontractor and supplier field of participants are best summarised as reluctance to change manifesting as:

a. *Not wanting to disturb the current payment situation despite how challenging it may be to cash flow;* and

b. *Imagining the worst and being focused on the loss of business with the person who is not paying for the work or services already performed.* These are the "old habits" of the subcontractor and supplier field of participants that still persist notwithstanding enactment of the BCIP Act 2004.

"The concern here is that there exists within the construction industry hierarchical dominion, the power of which becomes exercised in a bullying or otherwise unconscionable manner.

The forceful exercise of unregulated power is being used by the stronger party unilaterally and indiscriminately to cram down contract provisions or harsh remedy and to apply extreme illegitimate economic pressure as a means to extract from the weaker party benefits under the construction contract the stronger party would not otherwise be entitled to receive."

Licensing under QBCC Act 1991, Phoenix Activity, and the Collapse of Walton Construction Queensland

Under the QBCC Act, it is an offence for a person to carry out building work or to provide building work services for the work unless that person holds an appropriate class of licence under the Act (s 42 of the QBCC Act).

In addition to eligibility requirements, there are also financial licensing requirements and an applicant must satisfy the requirements stated in the Financial Requirements for Licensing Policy of the Commission (s 33(1)(a) of the QBCC Act).

The objectives of the policy are to promote financially viable business and to foster professional business practices in the Queensland building industry through regulatory restraint and barriers to entry. Moreover, Queensland is a signatory to the National Competition Policy Agreements and the policy of such agreements is based on the economic tenet that free and open competition drives efficiency and is the only sustainable means of delivering the productivity improvements and innovation necessary for economic growth and job creation. The policy, however, is "*not about the pursuit of competition per se. Rather, it seeks to facilitate effective competition . . . while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives*". (Independent Committee of Inquiry into a National Competition Policy 1993, p.xvi.)

The legislation, therefore, restricts competition by regulating the conduct of business through controls on the financial standing of all license holders. Target levels of net tangible assets and liquidity ratios are set along with reporting requirements established by the Commission. While the controls apply to all license holders, approximately 70 per cent are able to provide a self-assessment of their compliance ***and it is through this unusual manner in which the policy of the QBCC Act is administered by the Commission that Walton Construction Queensland was permitted to engage in "phoenix activity" and did so with the full blessing of the Commission until the creditors protested***.

A licence search of the Queensland Building Services Authority showed that on 4 October and 10 October 2013 the QBSA, as it was known at the time, had issued a licence to Peloton Builders (Open Builder Licence Number 1263534) and had concurrently issued a licence to Craig Walton as the nominee for Peloton Builders just immediately before Craig Walton placed Walton Construction Queensland into the hands of an external administrator. Craig Walton and Peloton Builders were permitted by the QBSA to engage in licensing activity for a critical period after the "relevant event" the regulatory effect of which permitted or otherwise granted Mr Walton sufficient time to fraudulently convey property of the estate out of the reach of creditors.

The objects of the QBCC Act 1991 are stated in section 3 and are "*to regulate the building industry to ensure the maintenance of proper standards in the industry; and to achieve a reasonable balance between the interests of building contractors and consumers; and to provide remedies for defective building work; and to provide support, education and advice for those who undertake building work and consumers*".

The dictionary of the QBCC Act says that "*consumer means a person for whom building work is carried out, but does not include a building for whom building work is carried out by a subcontractor*". It is clear from the legislation that the licensing regime and home warranty insurance target the protection of consumers through the maintenance of proper standards in the industry with such proper standards being based on the policy of the licensing regime.

The intention of the Queensland Building and Construction Commission is that the technical requirements of licensing, in the first instance, are to prevent the operation of poor quality builder, tradespeople or semi-skilled suppliers. The licensing regime therefore provides the consumer[1] with the necessary confidence that anyone engaged by the consumer to do building work will produce work of an acceptable technical standard. The financial requirements of licensing are intended to help protect consumer by ensuring license holders engaged are financially stable and will be able to complete a project and remain in operation thereafter such that any defects can be corrected.

The financial requirements of licensing, in the second instance, are intended to improve the overall financial stability of the industry and thereby reduce the likelihood of security of payment issues arising and this concern becomes the basis to investigate further the interactions between Walton Construction Queensland and the Queensland Building Services Authority the entity that was abolished by the previous Government and replaced by the Queensland Building and Construction Commission.

The collapse of Walton Construction Queensland illustrates how the Commission either failed to regulate and mitigate the irreparable harm occasioned by a significant and substantial number of creditors WCQ or turned a blind eye to what it was seeing because of the disclosures to the QBSA months prior to the collapse in October 2013. The QBCC Act, the Building and Construction Industry Payments Act 2004, the Corporations Act 2001 (Cth) and the various authorities resolving the law in this regard assist in showing how security of payment issue is an objective of the licensing regime and how the QBCC failed in regulatory duties.

An applicant for a licence must satisfy the requirements stated in the financial requirements for licensing of the Commission. The stated objectives of the policy are to promote financially viable business and foster professional business practices in the Queensland building industry.

The policy provides minimum requirements relating to the following matters: ***(1) net tangible assets – licensed contractors must hold prescribed levels of assets or capital to support the annual turnover permitted under the license issued; (2) business***

[1] Section 51ACA of the Competition and Consumer Act 2010 defines consumer, in relation to an industry, to mean a person to whom goods or services are or may be supplied by participants in the industry.

liquidity – licensed contractors must satisfy a liquidity test to establish that they have sufficient current assets to meet debts as they fall due; and (3) professional indemnity insurance – licensed contractors providing advice and design services must hold prescribed minimum levels of professional indemnity insurance.

All licence classes are subject to the "*fit and proper*" licensing requirement and the QBCC Act provides a non-exhaustive list in this regard and the Commission is empowered under the Act to ban or disqualify individuals and also to exclude individuals and companies. The QBCC Act provides for the exclusion of an individual from a holding a contractor's or nominee supervisor's licence if, the individual takes advantage of the laws of bankruptcy or becomes bankrupt and five years have not elapsed since the relevant bankruptcy event occurred or the individual was a director, secretary of or influential person for a company which has within a prescribed time had a provisional liquidator, liquidator, administrator or controller appointed, wound up, or ordered to be wound up and five years have not elapsed since the event happened.

In addition the Queensland Building and Construction Commission conducts financial audits of licensed contractors as part of its compliance functions. The purpose of the audits is to ensure that licensed contractors continue to comply with requirements stated in the financial requirements for licensing policy of the Commission.

The determination of the Queensland Building Construction Commission (QBSA as it was called at the time in questions) in relation to the furtherance of *phoenix activity* by permitting Craig Walton to be the nominee for Peloton Builders is deeply problematic from a federal perspective and is also a reviewable decision under the QBCC Act 1991. The Minister has the power to investigate this unusual set of circumstances further and it is a request under this submission for the Minister to conduct an investigation or evaluation of the extent to which the QBSA (QBCC) helped Mr Walton and Peloton Builders achieve the phoenix "fly out" that has seen approximately $19 million moved away from the creditors of Walton Construction Queensland and safely into the pockets of Mr Walton and his associates.

The concern here becomes focused on the knowledge of the Commission at the time it permitted Craig Walton to be the nominee for Peloton Builders, that is, 27 August 2013, which is one month prior to the transactions intended to hinder and delay the claims and debts of the creditors. Section 49A of the QBCC Act says that "*The Commission may suspend a licensee's licence without allowing the licensee to make written representations before the suspension takes effect if the commission believes, on reasonable grounds, there is a real likelihood that serious financial loss or other serious harm will happen to any of the following if the licence is not immediately suspended—(a) OTHER LICENSEES; (b) THE EMPLOYEES OF OTHER LICENSEES; (c) CONSUMERS; (d) SUPPLIERS OF BUILDING MATERIALS OR SERVICES*", all of which occurred as a result of the conduct of the Commission in permitting the Walton Construction Queensland, Craig Walton, and Peloton Builders to proceed with the pre-administration transfers about which the Commission ***is deemed to have knowingly assisted*** because of the date identified on the Licence Search issued under s 99 of the QBCC Act.

Furthermore, s 56AE of the QBCC Act clearly states that "*The commission must not grant a person a licence if the person is an excluded individual for a relevant event or an excluded company*".

Section 56AC(2) of the QBCC Act 1991 states that "*This section also applies to an individual if – (a) after commencement of this section, a company, for the benefit of a creditor – (i) has a provisional liquidator, liquidator, administrator or controller appointed or is wound up; or (ii) or is ordered to be wound up; and (b) 5 years have not elapsed since the event mention in (a)(i) or (ii) (relevant company event) happened; and (c) the individual was, when the relevant company event happened, a director or secretary or, or an influential person for the company or was, at any time after the commencement of this section and within the period of 1 year immediately before the relevant company event happened, a director or secretary of, or an influential person, for the company*." Section 56AC(4) further states that "*If this section applies to an individual because of subsection (2), the individual is an excluded individual for the relevant company event*".

The relevant company event in this regard relates to the appointment of Mr Franklin as one of the administrators of Walton Construction Queensland on 3 October 2013.

The record reflects that the creditors of Walton Construction Queensland raised concerns, numerous and serious concerns about the conduct of Walton Constructions Queensland almost a year prior to the collapse.

> Immediately following the collapse these same creditors raised serious concerns about how the QBSA could permit such a collapse and demanded to know the reasons why the QBSA granted Mr Walton a licence and therefore allowed Mr Walton to orchestrate a conveyance from Walton Construction Queensland to Peloton Builders in which every obligation existing to Walton Construction Queensland or incurred by Peloton Builder rendered the companies, and each of them, insolvent immediately after the transaction.
>
> However, approximately six months before the collapse, a report prepared by Deloitte Touche Tohmastu dated 25 March 2013 makes known to National Australian Bank that the NAB's security position is dire. This alarming conclusion is based on many significant concerns, for example, the refusal of "Management . . . to provide – Walton Construction Group audited accounts for FY12 – Monthly cash flow for YTD13A – Historical reporting on individual contracts".
>
> The concerns of the creditors before and after the collapse questioning the conduct of the QBSA (QBCC) are supported by the independent review conducted for NAB which was only performed by Deloitte for NAB. The intentional conduct on the part of Walton Construction highlighted throughout the report identifies actions and policies that are deeply problematic and injurious to creditors and would have triggered, when combined with the clear fact that complaints and repeated complaints had been made to the QBSA (QBCC), supervision audits and investigations by the regulatory body. For reasons known only to the QBSA (QBCC) this did not occur and an investigation into the reasons why is clearly needed.

The inescapable conclusion is that the transaction is "***phoenix activity***" and fraudulent as to creditors without regard to the "actual intent" of Mr Walton when, as here, the conveyance was made or the obligation was incurred without fair consideration or ***proper capitalisation*** (with proper capitalisation being a direct reference to Peloton Builders).

> The concerns and numerous concerns of the creditors after the collapse of WCQ focused on the dilatory conduct and procedural fairness on the part of the Commission in permitting such activity to occur.
>
> Moreover, the licensing record of the QBSA (now the QBCC) provides the Minister with evidence necessary to support the creditors' concern that the Commission did not satisfy the minimum standards required of the Commission on several issues which relate to the considerations in granting or otherwise permitting Mr Walton to be the nominee for Peloton Builders contrary to mandatory requirements under provisions which the Commission regulated licensees at the time in question and continues to regulate licensees.

Thus the material relied upon by the creditors of WCQ and presented to the QBSA raises the real concern of whether the QBSA (now the Commission) has been impartial in the pre-administration transfer and assists in showing the Minister that procedural fairness has not been followed under the Legislative Standards Act 1992 (Qld) (s 4) and the Corporations Act 2001 (Cth)(s 588FB) either before or after the collapse.

There is the further concern, without a review of the determination made by the QBSA (now the Commission) during a public examination in some forum, that the Commission, as the QBSA, combined and continues to combine both prosecutorial functions and advisory functions within the same staff person, conduct on the part of the Commission which created an unacceptable risk of bias in violation of the due process rights to be afforded to creditors by the law under s 588FB and the QBCC Act which jointly and severally establish fundamental legislative principles required to be considered and followed by the enabling legislation, that is, the QBCC Act 1991. If, as in this matter, the enabling statute requires the Commission to take multiple roles (such as primary and reviewing decision makes), the conflicting interests may violate the rule against bias and, for this reason and on this occasion, are clearly apprehended.

(link) Federal Court judgment Canadian Solar v Redset

The collapse of Walton Construction Queensland assists in showing how important the s.18(5) debt and lien were to the subcontractor in relation to the unconscionable conduct engaged in by many contractors like Walton Construction Queensland. The manner in which

Walton Construction Queensland operated is not unique but is a pattern of conduct followed by this tier of builder with alarming consistency, especially in relation to the use of the subcontractors' cash flow.

Walton Construction Queensland was involved in major construction projects in Queensland. Mr Craig Walton was the sole director and secretary of each company. Mr Walton, in his capacity as director, appointed an administrator under the insolvency provisions of the Corporations Act 2001 and did so on 3 October 2013.

The record, as discussed in Australian Securities and Investments Commission v Franklin (liquidator), in the matter of Walton Constructions Pty Ltd [2014] FCAFC 85, showed that Walton Construction Queensland had faced financial difficulties in the previous 18 months.

Shortly before the appointment of the administrator, Mr Walton entered into a number of transactions with entities created, owned or directed by a related party with the real concern here also being that the Queensland Building Services Authority, as it was known at the time, had been given considerable information by the parties in relation to the issuance of the licence to Peleton Builders and Craig Walton as the nominee for Peleton Builders.

The transactions included (1) an *Asset Sale Agreement dated 20 September 2013* under which Lewton Asset Services Pty Ltd acquired a significant portion of Walton Construction which performed construction work outside of Queensland; (2) an *Asset Sale Agreement dated 30 September 2013* under which Tantallon Constructions Pty Ltd, then known as Peleton Builders Pty Ltd, acquired a significant portion of the business of Walton Construction Queensland, including construction contracts. The consideration was the assumption of some of the liabilities; (3) a Deed of Arrangement dated 18 September 2013 by which an inter-company debt of <u>$18.9 million</u>[2] said to be owed by Walton Construction to Walton Construction Queensland was assigned for a consideration of $30,000 to QHT Investments Pty Ltd; and (4) a Deed of Assumption and Specific Security Deeds dated 23 September 2013 between the two Walton Companies and another entity.

The two Asset Sale Agreements involved the transfer of contracts for 31 projects with a total estimated completion cost of $61 million. In Queensland it appears that in the month of August (2013) $22 million in revenue was owed to Walton Construction Queensland and that Walton Construction Queensland owed subcontractors a total of approximately $14 million. It is estimated that revenue in the month of September (2013) was $18 million with 63 per cent to be owed to the subcontractors.

The claims of the subcontractors were either endorsed under the Act or were not and, as a result, two types of liens were created as the direct result of Walton Construction Queensland never issuing either a payment schedule or payment certificate in response to the claims of its subcontractors. These two liens are either a lien conferred by statute or an equitable lien.

The general lien under the BCIP Act is well-established by the operations of sections 18(5) and 19(4) of the old Act when no dispute exists and sections 26, 29, 30 and 31 when a dispute exists under Division 2 of the Act.

---

[2] The transfer of this $18.9 million through phoenix activity is how Mr Walton, with the blessing of the QBSA, has been permitted to "loot" WCQ and transfer fraudulently the money into his complete control with the overarching impact being that unsecured creditors receive nothing in the liquidation while he retains the fruits of scheme, that is, the $18.9 million.

When no payment schedule has been provided and the whole or any part of the claimed amount has not been paid on or before the due date for payment, as what occurred in the scenario presented in the Walton Construction Queensland matter, the claimant is entitled to judgment. Therefore, for those subcontractors who issued a payment claim under the BCIPA, they were entitled to judgment under section 19 of BCIPA.

These creditors of Walton Construction Queensland have a right *in rem* and the liquidator, for this reason, had ***in rem jurisdiction*** to seize or otherwise claw back to achieve the legal purpose under s.18(5) and for distribution within the estate.

Thus the Parliament of Queensland statutorily provided that the rendition of a judgment itself created a lien; **no additional creditor action is required to create a judgment lien in this regard and enforcement can be commenced under the rules of court** as permitted under the old Act.

The issue of concern was that a lien was created under s.18(5) of the BCIP Act 2004. These subcontractors do not have any kind of priority. They are mere unsecured creditors themselves. However, as a procedural matter under s.18(5), these *in rem* creditors have a *de facto* priority over non *in rem* unsecured creditors. A right in rem basically has two characteristics: (1) its direct and immediate relationship with the asset to which it relates, which means LINKED until the debt has been satisfied; (2) the absolute nature of the allocation of the right to the holder. In other words, the person who holds a right *in rem* can enforce it against anyone who interferes with his right without consent. This right is the protection conferred as a direct result of the operation of sections 18(5) and 19 of the BCIPA. ***Thus the right in rem survives a transfer of the asset to a third party***.

An insolvency or bankruptcy proceeding exists within the equitable jurisdiction of the court, and the maxim "***equity follows the law***" applies. One self-evident application of this maxim is equity's recognition of legal estates, rights, interests and titles.

c. An illustration of the distinction of the types of lien (statutory and equitable) (as it applies to my concern of what in fact the Minister has done to the Act) is found in the former equitable remedy of *ne exeat regno* which has direct application to the new s.20A(2) notice required under the amended Act.

    i. At common law debtors could be arrested in certain cases if they were about to escape the jurisdiction. The relevant process was a writ of *capias ad respondendum*. As arrest on *mesne* process existed at law it was subject to limitations. Legal arrest could only be achieved if the plaintiff's cause of action were legal. If the claim were equitable the writ of ne *exeat regno* was the only permitted consideration.

    ii. Equity, however, would never grant a writ of *ne exeat regno* if it were sought in circumstances where no writ *of capias ad respondendum* would have issued had the claim been legal.

    iii. Thus in *Colverson v Bloomfield* (1885) 29 CH D 341 the English Court of Appeal was faced with an application for the issue of a writ of *ne exeat regno* against a trustee about to leave the country.

iv. The plaintiff, his beneficiary, had previously obtained an order that the trustee pay to him certain trust money within seven days of service of the order. At the time of the hearing before the Court of Appeal, ***the order to pay had not been served***, and hence no obligation had yet arisen on the trustee to pay to him certain trust moneys within seven days of service of the order. At the time of the hearing before the Court of Appeal, the order to pay had not been served and, for this reason, no obligation had yet arisen on the trustee to pay.

v. The Court of Appeal dismissed the application, Cotton LF held at 341:

> But in my opinion, if the debt is now due and payable a writ of *ne exeat* ought not to be issued. The Court of Chancery, in granting this writ, merely proceeded by analogy to the process at common law. At common law arrest on *mesne* process was only applicable to legal debts. The Courts of Chancery, by analogy, issued a writ of ne exeat where the debt was equitable. In my opinion the objection is fatal, that if this had been a legal demand there could have been no arrest at common law, and by analogy we ought not grant a writ of ne exeat.

The operation of the ***statutory lien*** under the old Act, for the preceding reasons, defeated any attempt to novate a contract as what occurred in the Walton Construction Collapse. In this case the statutory duty to make payment cannot be transferred in the sense that rights are permitted to be transferred without consent. It is not uncommon, as here, to read or hear that one party "assigned the contract to another". This is an ambiguous expression which must be interpreted by use of surrounding facts and circumstances. An "assignment of the contract" may mean that the assignor intends to perform the contract duties and manifests an intention only to transfer the contract rights. This is the situation presented in the Walton Construction Queensland matter.

UNDER THE OPERATION OF THE OLD ACT, WALTON CONSTRUCTION QUEENSLAND COULD NOT HAVE TRANSFERRED THE RIGHT TO PAYMENT ON THE CONSTRUCTION CONTRACTS WITHOUT FIRST PAYING THE SUBCONTRACTORS PROTECTED UNDER THE ACT. The Act operated to protect the subcontractor in the event that the assignee does not pay the debt and therefore precluded or otherwise prevented the transfer of the debt and required payment by Walton Construction Queensland before the transfer and assignment. The assignee assumed the duty to build the structures and any revenue that was not attached by operation of law.

The operation of the statutory lien defeated any attempt on the part of WCQ to novate a contract. In this case the statutory duty to make payment could not be transferred in the sense that rights are permitted to be transferred without consent as what occurred in the subcontracts that were novated. WCQ was precluded by the operation of the lien under s.18(5) of BCIPA from transferring the right to payment on the construction contracts that were novated without first paying the subcontractors protected under the BCIPA when it transferred $1.3 million to the related entity. BCIPA operated to protect the subcontractor in the event that the assignee does not pay the debt, which occurred, and, for this reason, precluded or otherwise prevented the transfer of the debt and assignment.

The Minister and his Department, as with the first administrator in Walton Construction, did not understand or simply refused to appreciate the operation of s.18(5) lien of the old Act. The object of the Act has been corrupted in a critical way and the amendments permit this

menacing culture of non-payment not only to survive but to flourish in ways that are now protected by the amendments.

Therefore, by taking away the liability provision within s.18(5) and the operation of the lien, the Newman Government in passing the amendments has created a Wonderland-like scenario for the claimant not only in the situation presented by the Walton Construction Queensland collapse but also in all others when the respondent does not make payment. The claimant, as a result of the amended BCIPA, has no way of perfecting important rights before a bankruptcy or insolvency setting that the statutory lien in the pre-amended Act provided without any further notice to the respondent.

The insolvency provisions of the Corporations Act 2001, whether in relation to administration or liquidation, provide the administrator or liquidator not only with the power to collect property but also with the power to avoid transactions.

It is clear that the money owed to the subcontractors at the time of the Asset Sale Agreements had been already been perfected at the time of the appointment of the administrator under either scenario described in the preceding paragraphs.

They were trade debts outstanding and owing at the time of the transfer and in the case of the section 18(5) debts had been perfected in such a way that the money was secured with a statutory lien. THIS STATE OF STATUTORY AFFAIRS NO LONGER EXISTS BECAUSE THERE IS NOW THE NONSENSICAL REQUIREMENT THAT THE CLAIMANT GIVE NOTICE TO THE PERSON COMMITTING THE WRONGFUL WITHHOLDING OF MONEY UNDER SECTION 20A(2).

The effect of the s.18(5) debt and lien is that there was a constructive trust imposed on the funds ultimately used to the pay the subcontractor and the administrator had an obligation to claw back this money and such money, for this reason, was precluded by operation of law from being considered in the Asset Sale Agreements. Consequently, the transfer of this money was in fact a transfer of the debtor's property held in trust for the subcontractor and constituted a preference or fraudulent conveyance.

Bankruptcy decisions often turn on state law, particularly in determining property rights and the removal of the s.18(5) statutory debt, for the reasons outlined in the preceding paragraphs under this heading, undermines the core principal of the Act.

Thus the transfer of property by Walton Construction Queensland was done after the payment to be made by Walton Construction Queensland had crystallised under the BCIPA but before such debt had been cleared or otherwise paid by Walton Construction Queensland.

Thus the transfer of property under the various agreements included not only money earmarked for the subcontractors but also the consideration for the release of the lien that operated under the BCIPA—which is precisely the situation the Act before the amendments to the BCIPA precluded from occurring and expressly cancelled and obligated the administrator or liquidator to claw back under administrative power.