

April 8th. 2015

Senate Standing Committee on Economics,
PO Box 6100
Parliament House
Canberra ACT 2600

Submission On: Insolvency in the Australian construction industry.

Dear Senate Committee,

Documentation in the area of the above inquiry is difficult to obtain because of the secrecy of those benefiting from the problem.

Therefore I suggest that the enclosed submission be considered in terms of how it fits with known facts and realistic conclusions rather than submitted assertions and 'received wisdom' from years of PR releases.

Regards,

Brian Collingburn

Submission to
Senate Standing Committees on Economics
On
Insolvency in the Australian construction industry.
By Brian Collingburn, April 8th. 2015.
Addressing terms of reference clauses a, b, c, d, e, f, g, h, and i.

Introduction:

The following submission and enclosed photocopies may help to explain why insolvency is so frequent in the construction industry. How the law has failed the victims of the situation. Who gains from the causes of those insolvencies. Why having no technical expertise at CEO level has contributed to the present situation Why there is a reluctance by young people to enter construction industry trades, and why the suicide rate amongst sub and sub-sub- contractors is 2.4 times the national average.

All sources relied on are from print, radio, and TV media, and normal social contacts, including with construction and ex-construction workers.

These comments are based on the Melbourne area but may apply elsewhere.

The context for the use of the term criminal is not just in breaking existing laws, but includes knowingly profiting from criminal activities, and actions that are a conspiracy to defraud within the existing legal framework.

The Submission:

Please note articles from The Age Melbourne.

1. Modern 'tax dodge industry' rivals bottom-of-the-harbour scandal, by Michael West, pages 2 & 3, February 11th 2015. (a v)
2. Building firm sued after compo denied contractor's widow, Nick Toscano, page 9, March 31st 2015. (a i.)

Suppliers have to make a commercial decision on whether to take legal action to attempt debt collection. Suppliers have difficulty in avoiding continuing losses through phoenixing companies, as an industry warning system is impractical by supplier's organizations due to intimidation and defamation laws, the same laws that restrict inquiries into the questionable activities of the rich and powerful. (a iii.)

To understand the existing situation it is necessary to understand the motivations of those who built or allowed the situation to evolve.

In previous decades construction companies had most of a project completed by short and long term employees, with minor specialized work by contractors.

Phoenixing sub-contracting companies are profitable to developers and lead builders because a contractor with an intention to phoenix can profitably undercut honest contractors. Therefore when a construction is completed using such companies the total cost of construction is reduced and the lead profits are greater. Contracting out also eliminates the financial and other responsibilities of being an employer, such as conforming to awards and other such responsibilities. (b)

2.

This forces other developers and construction companies to adopt the same methods. (b)

Once criminal systems enter an industry they are like a cancer; “Who rides the tiger can never dismount”. (i)

Press releases divert attention to the construction unions, but the common European saying is, “when a fish goes bad it starts at the head”

Trade unions are generally reactive; they must deal with the circumstances that their members find themselves in.

Reasons that sub-contracting and sub-sub-contracting are attractive to tradesmen are the incentives of lower taxation; income splitting with wife, office expenses, etc. and by removing payments to superannuation increases immediate payments at the expense of long-term financial needs. This situation also increases cash in hand payments. For the younger tradesman especially, the pressure of immediate financial problems clouds out long-term considerations; the advantages of superannuation are far into the future. (b, c, d)

For the principal contractor, the advantages include, evading legal employer responsibilities, worker safety, insurance, hire and fire responsibilities, and responsibilities for payment of wages, leave, and other entitlements. And the profitable advantages of phoenixing sub-contractors mentioned above, (b, c, d)

For principal and sub-contractors, phoenixing can be the road to riches, and may become the only way to compete, leaving workers including sub-contractors and their employees, and sub-sub-contractors, (disguised employees), without the legal rights of employees to their wages, denies the ATO of taxation payments, and denies payments to superannuation. (a, b, c, d)

Therefore this is a federal matter for taxation and superannuation. (a v)

Sub-sub contracting in the construction industry increases industrial accidents, due to the financial attraction of short cuts.

The construction industry has historically been a dangerous industry but safety measures, regulations and laws, combined with Health and Safety Reps, have until recently improved safety; but sub-sub-contracting in the industry has increased minor and major accidents. Each accident is an added cost, to the victim and the project due to downtime, For serious accidents, this also causes increased costs to insurance companies and government welfare and judicial expenses. (b, e, i)

By allowing phoenixing the law has failed construction workers, so it is inevitable that criminal elements will see opportunities to offer other means of collecting owed monies. The desperation of these workers is shown by the suicide rate of construction industry sub-contractors and workers being 2.4 times community average; there is also a resultant increase of real insolvencies and bankruptcies. (f.h)

3.

There have been numerous cases of thugs 'dissuading' workers from making legal attempts to recover their rightful entitlements. (f)

Investigation of all contracts involved on suspect construction sites may reveal legal loopholes. (h)

Why have charges such as Conspiracy to Defraud never been laid against principals of Phoenixing businesses, or confiscation of their proceeds of criminal activities? (h)

Criminal types have infiltrated specific services for construction sites, such as cranes,

There have been reports of contracts and sub contracts being awarded after personal and general threats. (h)

There is no reason that people with criminal histories should not engage in legal business activities, but there is legitimate reason to give extra attention to their activities. (h)

For most of the second half of the twentieth century construction industry organizations were significant donors to the Victorian Liberal and Labor parties. This led to the legal system being tilted to the perceived interests of the construction industry. Research needs be done to see whether this has weakened the ability of the legal and justice system to deal with the problems that have arisen in the construction industry. (h.)

Donald Horne in his book *The Lucky Country* stated, "Australia is a lucky country run by second rate people who share its luck". There are ominous signs that luck is running out because it has been in the perceived, but short term, interests of those second rate people to resist necessary improvements.

Unlike countries with similar populations such as Sweden and Finland, Australia's inventions and innovations are mostly taken and financed overseas. The CEOs of construction companies have financial and/or legal qualifications rather than qualifications and/or experience, such as engineering, in the fields of value adding. Therefore their decisions and hiring on technical matters are often less than ideal, 'Expertise' cannot be judged by the technically naïve. (c.)

The West-Gate Bridge is an example, where the day before the bridge collapsed the then Melbourne Herald had a leading article attacking union concerns of safety on the bridge. Another example was the King St. Bridge where the welders warned of the dangers of welding high carbon steel at Melbourne's low winter morning temperatures, but the Herald "exposed another union conspiracy" up until the day before the welds failed. (c.)

4.

Such lack of adequate technical expertise is also present in human relations, where true technical expertise must understand the interface between humans and the applications of techniques. A sense of something doesn't seem right in any related situation means that problems are more likely to have an early detection.

Enclosed is copy of an article from Cosmos magazine indicating the advantages of technical expertise in value adding, as distinct from value grabbing. Such evidence is widespread and is overwhelming. (c)

The most successful overseas companies are those that have technical expertise at the top. Australian companies usually have lawyers and accountants as executives at the top, This because for the last sixty years a culture of rent seeking by creative accounting, and by government direct and indirect assistance has replaced value adding as a preferred method of gaining profits. (c.)

Therefore the ailments of the construction industry require a thorough overhaul of the laws and regulations regarding the industry and an injection of technical expertise into all decision-making.

Brian Collingburn

Encl:

Melbourne Age, 11/02/15, 'Modern 'tax dodge industry' rivals bottom-of-the-harbour scandal.

Melbourne Age, 31/03/15, 'Building firm sued after compo denied contractor's widow.

Building firm sued after compo denied contractor's widow

MELBOURNE ACC 31/03/15
Nick Toscano
Workplace Reporter 179

A widow with two young sons is suing a building company for compensation after a four-metre wall collapsed and killed a tradesman on a Melbourne worksite.

Isabel Klanja, 29, says she is struggling to support her family because WorkSafe did not provide financial assistance on the grounds that her husband, Michael Klanja, was a subcontractor and not an employee when he died last year.

Sole traders and contractors who work for themselves are not considered employees under the workers' compensation scheme and are ineligible for WorkSafe insurance.

Ms Klanja, of Tooradin, has launched legal action seeking damages from building firm Bilic Homes, which had contracted her husband as a carpenter. The 30-year-old was killed when a brick wall collapsed at a Bilic Homes housing project in Brighton East on June 23.

Ms Klanja said her family had been plunged into financial hardship, including owing thousands of dollars in outstanding funeral costs. Single-parenting benefits are her only source of income.

She said she felt authorities had let her down.

"I have just paid \$2000 of bills, and now all I have is \$5 in my wallet to last until payday on Thursday," she said. "These stresses are always on my mind - the stresses of the things that need to be paid for. I can't sleep at night."

Ms Klanja said she hoped her situation would help "get the word out" to other sole traders and contractors that they needed adequate

private insurance coverage. "They need to get their own insurance policies because this could be the outcome if they don't," she said.

In the civil lawsuit filed in the Victorian Supreme Court, the Klanja family alleges Bilic Homes was negligent in failing to ensure the half-built wall was adequately braced during the strong winds on the day and failing to provide a safe workplace. Lawyer John Karantzis, of Nowicki Carbone, said the damages sought included all future earnings and would be "significant".

WorkSafe Victoria has also launched a criminal prosecution of Bilic Homes after an investigation into the wall collapse uncovered

'I have just paid \$2000 of bills, and now all I have is \$5 in my wallet to last until payday.'

Isabel Klanja

serious alleged safety breaches.

Bilic Homes has been charged with multiple workplace violations and could face heavy penalties.

Company director Stan Bilic said the legal proceedings were in the hands of his lawyers, but indicated he may fight the allegations and plead not guilty.

"I don't have anything to say, other than I have been in this game for the last 42 years ... I don't see ourselves guilty."

Meanwhile, Ms Klanja's friends have started an online fundraising campaign to help the young family meet day-to-day expenses including mortgage payments, bills, funeral costs and childcare fees.

Modern 'tax-dodge

MELBOURNE AGE 11/02/15
Michael West p2

Tax avoidance is so prevalent in Australia's business sector now it rivals the infamous bottom-of-the-harbour tax schemes of the 1970s and 1980s, enabled by immoral behaviour from accountants, a former head of the profession's peak body has warned.

John Miller said the schemes were no more scandalous than some of the aggressive tax-minimisation strategies used by multinational companies today.

He said the government had little choice but to enact new laws

to combat corporate tax avoidance, because it had created a revenue hole in public finances.

Mr Miller, formerly a senior partner in audit firms and head of the accounting industry peak body that is now CPA Australia, said the leadership of the profession no longer had the same clout as it did 30 years ago, when he and the Institute of Chartered Accountants collaborated with the government to stamp out the widespread corporate rorting.

In 1987, the Australian Taxation Office reported that 6688 companies had been involved in bottom-of-

industry' rivals bottom-of-the-harbour scandal

MELBOURNE AGE 11/02/15 p3

the-harbour schemes in which the promoter - a lawyer or accountant - would strip a company of its assets and transfer them to another company, thereby leaving it unable to pay its taxes and creditors.

In a submission to the parliamentary inquiry into corporate tax avoidance, Mr Miller said "the avoidance industry" today had massive weight.

"For the larger accounting and legal firms, it is a major part of their practices and an important part of corporate culture and bottom-line aspirations.

"In this context, one admires

those many companies, large and small, whose directors heed the call of true corporate social responsibility and true corporate citizenship and refuse the enticements on offer to aggressively reduce tax.

"They are today's commercial heroes."

He said the government had more of a revenue problem than a spending problem and resulted in reduced tax collections, meaning decent corporate citizens were penalised with higher tax rates.

One solution would be to consider taxing revenue rather than

profit. Many multinationals load their Australian companies with costs - often high debt - to deliberately produce low profits in this country, thereby minimising taxable income.

Although taxing revenue would address avoidance by mining companies, it could penalise retailers, companies with high revenue but tight profit margins, he said.

To create a more productive and fairer corporate revenue base the law needed to be changed.

"Profit-shifting and international management fees, royalties, inter-company group charges, in-

cluding interest and all other artificial transactions ... which do not have a commercial substance and aim only, as did the bottom-of-the-harbour scheme, to minimise tax should be banned as corporate tax deductions.

"The law should support good ethics and good citizenship and not leave these qualities in subjective ambiguity," Mr Miller said.

He said multilateral efforts at reform via international forums such as the Organisation for Economic Co-operation and Development were unlikely to succeed and were used as a scapegoat for inaction by

multinational tax avoiders and lobby groups.

■ Bottom-of-the-harbour schemes were Australia's greatest corporate tax avoidance scandal. During the 1970s, lawyers and accountants who promoted the schemes advised their clients to strip assets from a company, transfer them to another company, and let the first company sink.

By doing this, the Tax Office and other unsecured creditors of the failed company were left in the lurch. The scam cost the taxpayer an estimated \$1 billion, tens of billions in today's dollars.