



CSA

CONSTRUCT
SUPPORT AUSTRALIA

CONSTRUCTION 101

The Complete Guide to Construction Insolvency & Legal Risk

125%

Rise in insolvencies 2022–2025

2,609

Construction liquidations in 2025

21 days

To respond to a Director Penalty Notice



The Numbers: Construction Insolvency 2022–2026

The trajectory is stark. ASIC data and Construct Support Australia's own practice experience reflect a dramatic rise in liquidation appointments across the construction sector.

2,609

Liquidations in 2025

Up from 1,160 in 2022 — a 125% increase in just three years.

~30%

Share of All Insolvencies

Construction leads every other sector nationally.

\$1.8B+

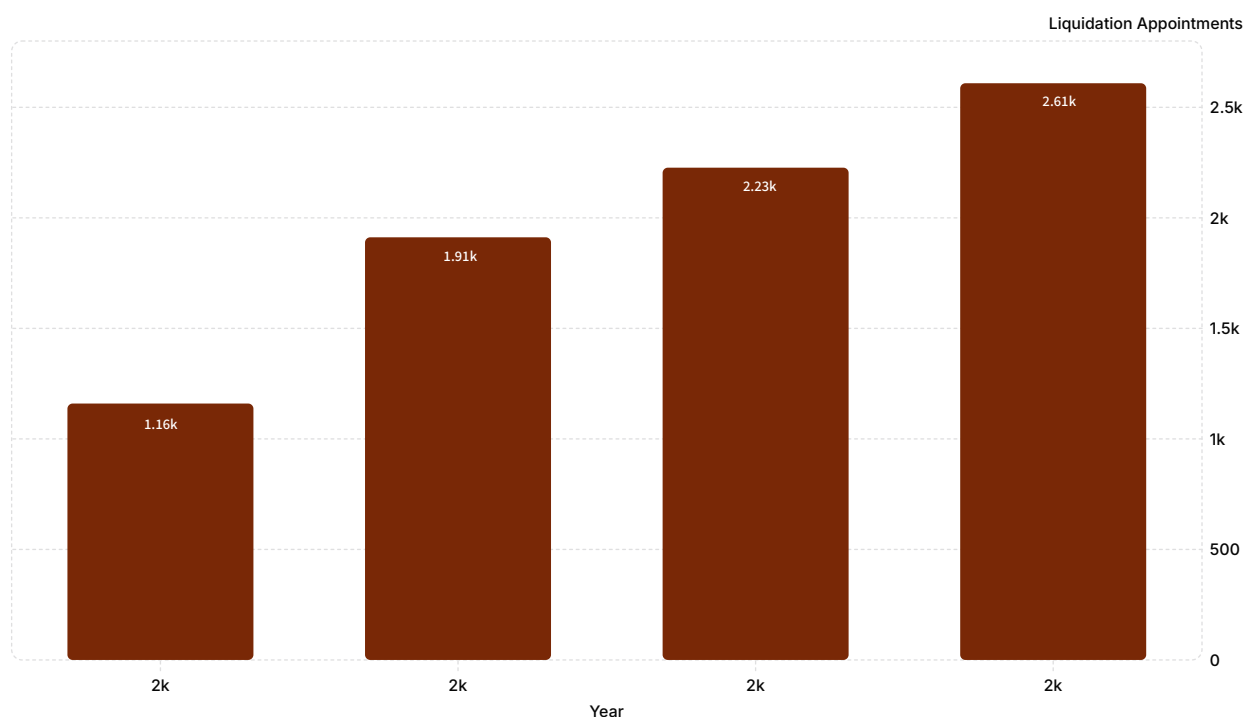
Estimated Creditor Losses

Unpaid subcontractors and suppliers in FY2024–25.

68%

SME Builders Reporting Stress

Cash flow pressure in Q1 2026 per ABS survey.



Queensland, New South Wales, and Victoria account for over 75% of construction insolvency appointments. Residential building (particularly medium density and detached housing) and civil infrastructure subcontracting are the hardest hit sub-sectors.

Why Construction Companies Fail

The following factors are the primary drivers of insolvency in the construction sector, drawn directly from Construct Support Australia's insolvency and restructuring practice.

Fixed Price Contract Exposure

Contracts signed in 2020–2023 have become deeply unprofitable as materials and labour costs have risen well beyond the margins originally built in.

Escalating Material Costs

Steel, timber, and concrete remain above pre-pandemic pricing in many markets, compressing already thin margins.

Labour Shortages & Rising Wages

Skilled trades are in short supply nationally, driving both cost overruns and programme delays across all project types.

Cash Flow & Delayed Payments

The domino effect: one insolvent head contractor cascades losses down to subcontractors and suppliers throughout the chain.

ATO Enforcement Resumption

Businesses that stopped paying superannuation and PAYG in 2021–2022 are now facing Director Penalty Notices with dramatically grown debts.

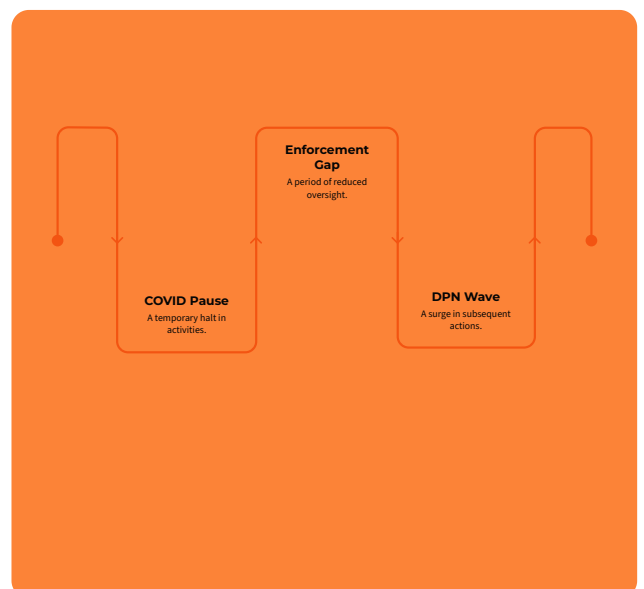
Poor Financial Management

Many SME builders lack real-time visibility over project-level profitability, and lack understanding of Security of Payment and contract risk obligations.

The ATO's Four Year Lag

During COVID, the ATO paused much of its enforcement activity, allowing debts to accumulate. As the pause extended into the recovery period, unpaid superannuation and PAYG obligations were left to grow with interest, leaving many directors exposed only later when enforcement resumed.

- ⊗ Directors who fail to act within 21 days of a DPN face personal liability. If you have received a DPN, contact Construct Support Australia immediately.





Key Legislative Changes in 2026: Queensland

 QBCC REFORMS

Email as Preferred Communication & Penalty Provisions

The QBCC has modernised its communication framework under the Queensland Government's Building Regulation Renovation initiative. Tranches 1 and 2 were rolled out in early 2025, with Tranche 3 introduced in early 2026.

Email Now Preferred

Email is the QBCC's preferred method for issuing notices and critical communications to licensees.

Active Email Required

Licensees must maintain an active email address registered with the QBCC at all times.

14-Day Update Rule


If you change your email address, you must notify the QBCC within 14 days — failure may attract a penalty of up to 10 penalty units.

All Contact Details

This obligation also applies to residential addresses and phone numbers — all contact details must be kept current.

Annual Reporting Requirements — Important Clarification

The QBCC does **not** require individual licensees in the SC1 category (up to \$200,000 maximum revenue) or SC2 category (up to \$800,000 maximum revenue) to comply with annual reporting requirements. However:

 This change applies to **individual licensees only** — it does NOT affect companies. The Minimum Financial Requirements (MFR) obligations continue to apply to all licensees, including those in SC1 and SC2 categories. Companies must continue to comply with all existing MFR obligations regardless of revenue category.



Key Legislative Changes in 2026: New South Wales

BUILDING BILL 2024

Full Implementation Abandoned

The draft Building Bill 2024 (NSW), which proposed a comprehensive overhaul of the building regulatory framework, has had its full implementation abandoned. Targeted amendments to existing legislation are being pursued instead.

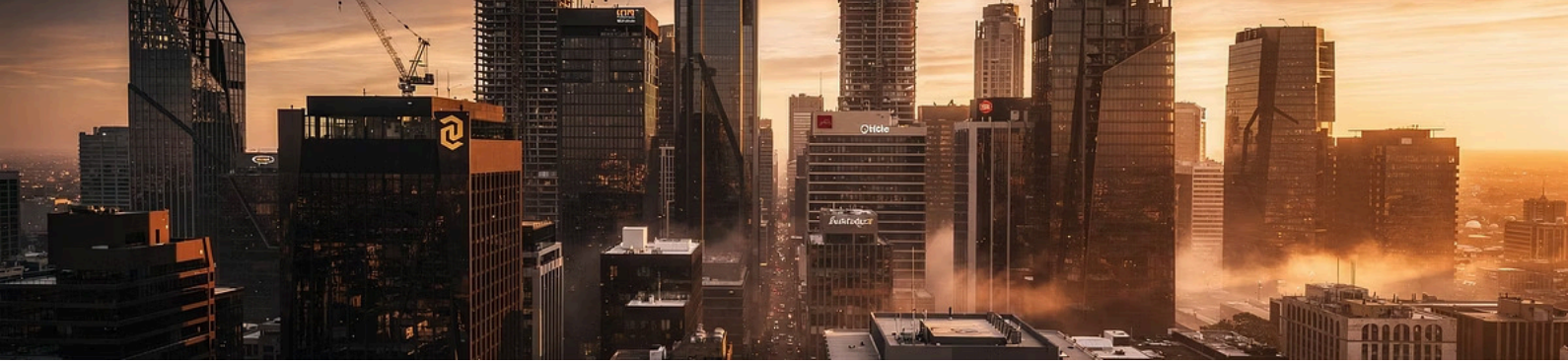
Industry participants should monitor further announcements from NSW Fair Trading and the Building Commission NSW.

INBOUND REQUIREMENT

Specialist Waterproofing Licence

NSW is introducing a new specialist waterproofing licence category. Contractors performing waterproofing work on residential and commercial buildings will be required to hold this licence.

Timing for mandatory commencement is expected to be confirmed in late 2026. Businesses performing waterproofing work should begin assessing compliance requirements now.



Key Legislative Changes in 2026: Victoria

 BUILDING & PLUMBING COMMISSION

Expanded Powers Under the Building Legislation Amendment (Buyer Protections) Act 2025

The Act brings together three existing bodies into a new, consolidated Building and Plumbing Commission:

1

Victorian Building Authority (VBA)

Licensing, compliance, and enforcement for building practitioners.

2

DBDRV

Domestic Building Dispute Resolution Victoria — dispute resolution for homeowners and builders.

3


VMIA Domestic Insurance

The domestic building insurance arm of the Victorian Managed Insurance Authority.

4

New Consolidated Commission

A single, powerful regulator with expanded rectification and enforcement powers.

-  Under the new regime, rectification orders can be made against builders so long as 10 years have not elapsed since a final inspection certificate was issued, an occupancy permit was issued, or the date of practical completion. Minimum Financial Requirements now apply to domestic builders, with active consideration of extension to the commercial sector.

Victoria: Security of Payment Overhaul & NCC 2025

VICTORIA SOP REFORMS 2026

"New changes prioritize cashflow and enforceability." — Andrew Blair, November 2025

Retrospective Application

Amendments apply retrospectively to existing construction contracts.

Revised Payment Framework

Reduced scope for respondents to use technical defences to avoid or delay payment.

Stronger Enforcement

Adjudication determinations are more readily enforceable as court judgments.

Faster Adjudication

Faster claimant access to adjudication for smaller claims.

NCC 2025 — NATIONAL

Available for Adoption from 1 May 2026

The NCC 2025 was published on 1 February 2026. Interior fit-outs and tenancy works must comply with NCC requirements even where they are non-structural.

Condensation Management

Updated vapour management requirements for building envelopes.

Access & Egress


Revised accessibility compliance provisions for commercial and mixed-use buildings.

FRL Clarification

Clearer guidance on Fire Resistance Level specifications for non-structural fit-out elements.

On-Site Solar PV

New provisions governing installation of on-site photovoltaic systems as part of construction works.

 Builders and fit-out contractors should confirm which NCC version applies in their jurisdiction before commencing work, as adoption timetables vary by state and territory.

Security of Payment: National Harmonisation

All Australian states and territories have now moved toward a harmonised Security of Payment framework. Key 2026 updates affect every participant in the contracting chain.

Mandatory 10-Day Payment Terms

Head contractor to subcontractor payments reduced from 15 business days in most jurisdictions.

Extended Claimant Protections

Subcontractors can serve payment claims directly on principals where a head contractor is in administration or liquidation.

Adjudication Fee Reforms

Capped adjudicator fees for claims under \$250,000, improving access for small subcontractors.

NSW Specific Expansion

The Building and Construction Industry Security of Payment Amendment Act 2025 (NSW) expands the definition of 'construction work' and narrows grounds for withholding payment in adjudication.

Who Is Protected?

All subcontractors, suppliers, and consultants in the contracting chain — from head contractor down to sole trader.

- Head contractors
- Subcontractors
- Suppliers & material providers
- Consultants & engineers
- Sole trader tradies

What To Do Now

Review your payment claim procedures, ensure your contracts reference the correct SOP legislation for your state, and seek advice if a payment dispute arises.

- Review all active contracts for SOP compliance
- Ensure payment claim notices are correctly formatted
- Track all payment schedule deadlines
- Contact Construct Support Australia if a dispute arises

Why Contracts Matter — And What Has Changed

Construction contracts are not just paperwork. They are the primary mechanism for allocating risk, protecting cash flow, and providing a pathway to resolution when things go wrong.



Risk Allocation

They allocate risk clearly between principal, contractor, and subcontractor — and define what is and is not included in scope.



Payment Rights

They establish payment rights and the process for progress claims, protecting cash flow throughout the project lifecycle.



Variation Mechanisms

They provide mechanisms for variations, protecting margin when scope changes — a critical protection in the current cost environment.



Extension of Time

They protect against delays through extension of time (EOT) provisions, shielding contractors from liquidated damages exposure.



Dispute Resolution

They provide dispute resolution mechanisms — from negotiation to adjudication and arbitration — and give certainty to financiers and insurers.



Legal Enforceability

They create legal enforceability. A handshake is not a contract — and in construction, an unenforceable agreement can be catastrophic.



Updated Standard Form Contracts 2025/2026

AS 4000–2024

General Conditions of Contract — First major update since 1997. Modernised risk allocation for principal-supplied design, revised force majeure provisions covering supply chain disruption, mandatory dispute resolution escalation before adjudication or arbitration, and PPSA-aligned security provisions.

AS 4902–2024

Design and Construct — Updated to align with AS 4000–2024. Includes clearer design development obligations, updated novation of consultant agreement provisions, and more clearly delineated fitness for purpose obligations.

ABIC MW2 2025

Major Works Contract — Suspension for non-payment rights aligned with Security of Payment timelines; revised provisional sum methodology; and updated professional indemnity and public liability minimums.

NEC4

Engineering and Construction Contract — The 2026 Australian NEC Users' Group guidance recommends Option X2 (changes in law) in all contracts given ongoing legislative reform, and Option W2 (adjudication) to align with Australian Security of Payment regimes.

⊗ **Fixed Price Risk:** Executing a fixed price lump sum contract without adequate rise and fall provisions, a clear variation regime, and a realistic contingency allowance is a significant risk. Contracts signed at 2021–2022 pricing have been a primary driver of construction insolvencies in 2024 and 2025. Before signing any major contract, contact Construct Support Australia for independent advice.

Options for Construction Businesses in Financial Trouble

If your construction business is under financial pressure, these are the key legal pathways. The right option depends on the severity of the position, the nature of your contracts, and the time available to act.

Voluntary Administration

A short-term rescue mechanism where an independent administrator takes full control. Provides a moratorium on creditor action while the administrator assesses ongoing projects, negotiates with principals, and determines whether contracts can be completed, novated, or terminated. Creditors vote on the company's future — often through a Deed of Company Arrangement (DOCA).

Liquidation

The formal winding up of the company. In construction, the liquidator deals with complex issues: partially completed projects, performance bonds, bank guarantees, subcontractor claims, and retention monies held by principals. Creditors voluntary liquidation is the most common form. Court-ordered liquidation typically follows an expired statutory demand.

Safe Harbour

Directors can access protection from insolvent trading liability while developing and implementing a restructuring plan, provided they are taking reasonably appropriate steps to achieve a better outcome than immediate liquidation. Construction directors can use safe harbour to pursue variation claims, negotiate with principals, complete profitable contracts, and seek refinancing.



Small Business Restructure & Director Obligations

Small Business Restructure

Available to companies with total liabilities under **\$1M**. A Small Business Restructuring Practitioner develops a restructuring plan for creditors. For smaller construction businesses and sole trade subcontractors this is often faster and cheaper than voluntary administration.

Eligibility requires current tax lodgements and up-to-date employee entitlements.

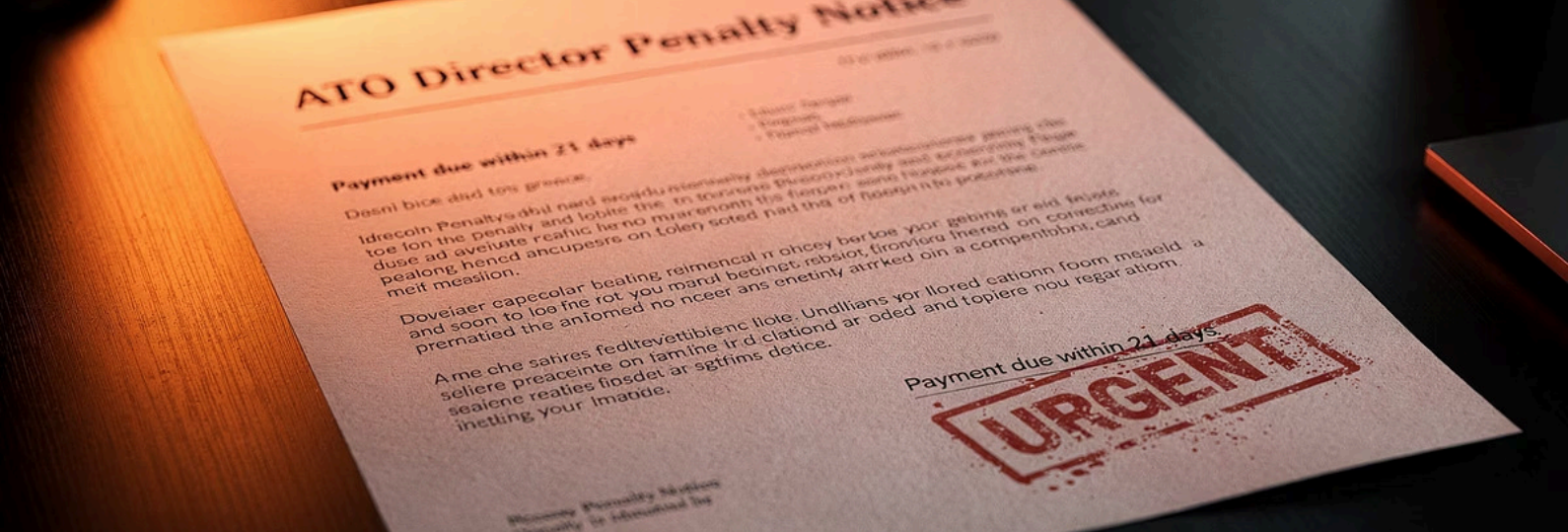
- Faster and cheaper than voluntary administration
- Directors retain control during the process
- Creditors vote on the restructuring plan
- Protects ongoing contracts and licences where possible

Director Obligations — Act Early

Construction company directors have strict legal duties when financial distress sets in. The industry's long project cycles and complex payment claims can mask insolvency until rescue options have closed. If you continue to trade while insolvent, you risk personal liability for:

- Unpaid trade creditors and subcontractor invoices
- PAYG withholding obligations
- GST liabilities
- Superannuation guarantee obligations
- Workers compensation premiums
- Outstanding retention monies held on trust

⚠ The window to act closes fast. Once a company is insolvent, every day of continued trading increases personal liability exposure. Seek advice immediately



Warning Signs — Act Now if You See These

The ATO has significantly increased Director Penalty Notices in the construction sector from 2023 onwards. Once a DPN is issued, directors have **21 days** to either pay the debt personally or place the company into voluntary administration or liquidation. **Waiting is not an option.**



ATO Notices

Director Penalty Notices or statutory demands from creditors — immediate action required within 21 days.



Bank Reducing Facilities

Bank reducing or withdrawing your facility limits is a critical early warning of deteriorating financial position.



Variation Claims Blowout

Variation claims substantially exceeding contract budgets signal that a project is no longer financially viable.



Subcontractors Refusing Work

Key subcontractors refusing to continue without upfront payment indicates loss of confidence in your solvency.



QBCC Licence Under Review

QBCC licence conditions under review due to MFR non-compliance can lead to licence suspension and project shutdown.



What You Should Not Do

In a construction insolvency situation, poorly advised decisions can significantly worsen your position and increase personal liability exposure. Avoid these critical mistakes:

Ignore Security of Payment Claims

Unanswered claims become adjudication debts enforceable as court judgments — silence is never a safe response.

Draw Down on Project Bank Accounts

Using project bank accounts or retention funds to cover company operating costs exposes directors to serious personal liability.

Grant New Security While Insolvent

Granting new security or personal guarantees over company assets while the company is insolvent can constitute an unfair preference or uncommercial transaction.

Transfer Assets to Related Parties

Transferring plant, equipment, or other assets to related parties below market value is a voidable transaction that liquidators will pursue.

Commit to New Contracts

Continuing to commit to new contracts without addressing the existing financial position compounds insolvent trading exposure.

Wait for a Statutory Demand

Once a creditor's statutory demand is served, you have only 21 days before liquidation proceedings can commence. Do not wait.

⊗ Assuming that completing the current project will resolve underlying financial problems is one of the most common — and most costly — mistakes construction directors make. Seek advice now.



How Construct Support Australia Can Help

Construct Support Australia is a specialist advisory service dedicated exclusively to the construction industry. We work with builders, developers, subcontractors, and suppliers across residential, commercial, and civil infrastructure projects throughout Australia.

Security of Payment

Claims and adjudication, acting for claimants and respondents across all jurisdictions.

Contract Review & Risk

AS 4000, AS 4902, ABIC MW2, NEC4, and bespoke forms — reviewed before you sign.

QBCC & MFR Compliance

Licence compliance, Minimum Financial Requirements advice, and Project Bank Account disputes.

Restructuring & Insolvency

Voluntary administration, DOCA, safe harbour planning, and director risk mitigation.

ATO & Statutory Demands

Director Penalty Notice advice and response, statutory demand responses, and winding up defence.

Debt Recovery

Subcontractor and supplier debt recovery, performance bond calls, bank guarantee disputes, and retention trust enforcement.

The sooner you seek advice, the more options you will have. Whether you are a builder, developer, subcontractor or supplier, Construct Support Australia delivers decisive legal guidance when it matters most.

Talk to us today.

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