Submission to the Productivity Commission: Reducing barriers to business dynamism in Australia

3 July 2025

WHO WE ARE

Master Builders is the nation's peak building and construction industry association, which was federated on a national basis in 1890. Master Builders' members are the Master Builder State and Territory Associations. Over 130 years, the Master Builders network has grown to more than 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association representing all three sectors: residential, commercial, and civil construction.

The Master Builders network also delivers vocational education and training through its network of registered and group training organisations across Australia. This includes trade qualifications in building and carpentry as well as ongoing professional development training.

Membership with Master Builders is a stamp of quality, demonstrating that a builder values high standards of skill, integrity, and responsibility to their clients.

Master Builders' vision is for a profitable and sustainable building and construction industry.

Introduction

On 29 May 2026 the Productivity Commission released a call for submissions seeking views on barriers to business dynamism in Australia.

Master Builders Australia Ltd (Master Builders) provides the following response to the call for submissions.

The building and construction industry faces a range of challenges that makes running a successful business increasingly complex and demanding.

Builders today need more than just knowledge on the tools, they need a range of skills, from financial acumen, to contract management and dispute resolution. They need to understand increasingly complex building codes and navigate regulatory and environmental hurdles. And despite this complexity, the building and construction industry is predominantly made up of small businesses, with 91% of all construction firms employing less than 5 people and 98.5% having less than 20 employees[1].

To increase business dynamism in the construction there needs to be a focus on reducing the regulatory burden on businesses, harmonising industry requirements across the country, addressing labour supply and skills shortages, developing ways to manage financial constraints on the industry and adopt modern methods of construction, and increase opportunity for business to scale operations.

Success in the building and construction industry is not easy, according to the ABS roughly 62% of businesses survive their first four years of operation. Additionally, the churn of business in construction is among the highest across any industry, with a 30% annual churn rate.

Finally, it is critical to note that over the past decade, no industry has performed worse than construction when it comes to productivity. The effects of this have been grim: ever deteriorating housing affordability, insufficient volumes of new home building and delays in the delivery of new homes. The poor performance of construction productivity means that it costs more to create the vital infrastructure that we need. As a result, government capital and infrastructure budgets don't stretch as far. One of the most problematic aspects of weak construction productivity is the way it infects other parts of the economy and erodes the buying power of families' pay packets.

There are many barriers to operating a successful building and construction business in Australia and some of these will be outlined in the following paper.

Key Recommendations

- Greater harmonisation across jurisdictions, including licensing requirements, financial criteria, insurance, local and state government taxes and charges and building rules and regulations.
- Eliminate cascading taxes, such as GST being charged on top of state taxes, in relation to insurance products for the building and construction industry.
- Reduced regulatory burdens at all levels of government.
- Support for Modern Methods of Construction at all levels of government, but especially in regards to federal contracting and procurement, by removing barriers to MMC from procurement frameworks.
- Greater recognition of skills across the industry including a competency-based licensing framework for building contractors.

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[1] Small Construction Businesses: The Backbone of Australia's Building Industry | 2025 Insights - Builders Institute

- Ensure that any barriers caused by jurisdiction specific regulatory requirements do not prevent building and construction business from accessing the small business restructuring scheme.
- Further simplification of the administrative functions in relation to Director Identification Numbers

Barriers to business entry, expansion and exit

Regulatory and administrative burdens

The building and construction industry, particularly the residential building industry is one of the most heavily regulated and complex sectors across the economy, the sector being subjected to:

- complex and extensive statutory consumer protection requirements including legal requirements that apply to contractual arrangements;
- complex licensing and registration requirements;
- regulated payment arrangements including limits on deposits;
- quasi regulation of payment terms through the involvement of financial institutions; and
- ineffective and time consuming mandatory dispute resolution methods.

In addition, the highly competitive of the industry leads to:

- demanding terms of trade from suppliers;
- significant exposure to uncontrollable events such as inclement weather;
- fluctuation in supplies of building materials and price of subcontract labour; and
- demanding workplace relations arrangements.

Some of these are elaborated on below.

Licensing requirements

All jurisdictions have licensing requirements that apply to those carrying out building and construction work.

While Master Builders supports appropriate licensing to ensure building and construction is delivered to expected standards there is considerable variation regarding these requirements across jurisdictions.

Master Builders supports and encourages the harmonisation of regulation and licensing requirements across Australia. Mutual recognition of licensing for construction work by an individual or company to allow for work to be carried across borders without having to requalify offers a range of benefits.

However, notwithstanding strides to work towards greater harmonisation there are limits that vary by jurisdiction, for example in NSW for project over $20,000 there are requirements linked to obtaining local home warranty insurance. And in some places there may be additional hurdles for companies providing work interstate, for example in South Australia a company may be required to apply for a new local business license. Another example is, Queensland's Minimum Financial Requirements (MFR). These rules effectively operate as a structural barrier to business entry, expansion and exit due to its rigidity and compliance burden.

For new entrants, the MFR requirements impose relatively high upfront compliance thresholds, including minimum net tangible asset levels, strict liquidity ratios, and prescriptive financial reporting requirements. While the requirements provide consumer protection, they can also make it difficult for start-ups or smaller contractors to establish a foothold, particularly where they lack an established balance sheet or access to capital.

The requirements also constrain growth by tightly linking a contractor's allowable turnover to its financial capacity. While this is designed to manage risk, it also limits a firm's ability to scale in response to market opportunities. Businesses seeking to expand must first adjust their financial position—often requiring retained earnings, capital injections, or reduced drawings—to meet increasing MFR thresholds. This can discourage investment, delay project uptake, and reduce responsiveness to demand. Additionally, the administrative burden of ongoing reporting, audits, and compliance monitoring diverts resources away from core business activities.

MFRs can also create unintended consequences for firms in financial distress. When businesses do fall below thresholds, the regulatory consequences can be abrupt, limiting their ability to wind down projects, restructure, or transition out of the market smoothly. This can exacerbate insolvency impacts across the supply chain, affecting subcontractors and clients.

There are similar arrangements operating around the country that link financial assessments to the ability to obtain home warranty/domestic building insurance. This restrains the building and construction industry and impacts on the amount of work that can be undertaken.

Financial requirements around the country should be harmonised in consultation with industry to develop a fit for purpose financial assessment framework that can be used nationally. Any such framework should operate in a manner that gives flexibility to new entrants and those looking to expand their business, as the current rigid boundaries in some jurisdictions restrict expansion.

More flexibility in these thresholds could allow businesses in financial distress and allow them to continue operating. Additionally, compliance thresholds should be amended to reduce unnecessary burden on the industry. The effect of financial requirements on licensing and the ability to maintain insurance should be addressed to allow for greater flexibility. This could include a grace period or another mechanism to assist a business to trade out of distress.

Impact of MFRs

In 2022, Master Builders Queensland commissioned Ernst and Young to undertake a report into assessing the effectiveness of Queensland's MFRs for building practitioners[2]. The report concluded that "Queensland's MFRs are no more effective than other regimes across Australia" when it comes to reducing financial failure in the building and construction industry.

There is value however, in maintaining a financial assessment requirement as part of the licensing system. This should be a process that drives good financial management and helps assess financial capacity to undertake work appropriate to the expedient risk.

The current reporting system could be amended replaced with a system which aligns as closely as possible with existing accounting standards and the preparation of standard financial statements to minimise additional costs to businesses. It should also be consistent with other financial reporting requirements such as the government's own prequalification for contractors where possible.

Done right an updated assessment could improve productivity by improving financial literacy and helping to ensure that work is only undertaken by those with the financial capacity to do so.

Insurance and Red Tape

Participants in the building and construction industry are subject to a number of insurance obligations that are imposed on them through regulation, contractual obligations or as a part of the participant's risk mitigation and/or financial protection strategies. These obligations, regardless of how they are imposed, have a pivotal role in safeguarding not only the participant, but also other stakeholders such as the client, subcontractors, suppliers and financial institutions – but do come at a cost.

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2 Assessment-of-MFRs-EY-Report, April 2022

These costs are both direct and indirect and have a particularly adverse impact on small business, noting that 98% of business in the building and construction industry are small business.

The total premiums payable are largely dependent on the government levies and taxes imposed. such as an emergency services levy, a terrorism levy, stamp duty and GST. These taxes vary greatly across jurisdictions, with the government charges ranging from 11% in the ACT through to 28.7% in NSW.

GST is then added on top of the base premium plus these levies which results in a tax (GST) being calculated on top of those levies and taxes. The cascading effect of the government charges, stamp duty and GST, inflates insurance premiums across all jurisdictions. These costs are borne by the business seeking coverage under the insurance product in the first instance and then passed on to the client or end user, another factor in the increasing costs of building and construction works.

We urge the Productivity Commission to investigate the cascading effects of taxes and charges, especially in relation to the calculation of the GST. Ideally the Federal Government should look to reduce fees and charges where possible and at least remove GST from state taxes for the building and construction industry.

Regulatory burden

Regulations serve a very important purpose. Without correctly calibrated regulations, the safety and quality of new homes and buildings would be at risk of falling short. Regulations also safeguard our environment and ensure that our industry's workforce can operate in settings that are healthy and secure.

The set of rules that construction businesses have to abide by has major implications for our industry's productivity performance. The collective rulebook is vast, and traverses such areas as health, safety, environmental protection, industrial relations, accountancy, cashflow management – not to mention building standards. For construction businesses, the process of understanding and implementing the rules that apply to their business is very difficult because the rules are dispersed so widely. This problem is exacerbated by the fact that regulation flows from all levels of government – including the 537 councils.

This regulatory environment deeply constrains construction firm's ability to grow. This is one of the reasons why productivity improvements are so hard to win in the building and construction industry. Current regulatory settings suffocate business growth and prevent productivity from improving. In the same way, regulations make it very hard for new businesses to set up in the construction industry, something which has unfavourable effects for competition.

Regulations don't only stifle product, they have indirect costs that inevitably are passed on to consumers. Regulations act as one of the biggest drains on productivity in the construction industry and is one of the first things mentioned by industry participants when asked about our productivity challenges. In last year's landmark report, the Productivity Commission[3] identified the regulatory burden as one of the main culprits behind our industry's poor productivity performance.

The burden of regulatory costs can be jaw dropping: in December 2025, the Productivity Commission estimated that regulatory costs add between $135,000 and $320,000 to the ticket price of a newly built house and an extra $40,000 to $175,000 for a new apartment.

[3] Productivity Commission, *Creating a more dynamic and resilient economy*, Inquiry Report 10 December 2025

Australia’s innovation ecosystem

Modern Methods of Construction

Modern Methods of Construction (MMC) is a significant opportunity to transform the construction industry by improving productivity, quality, and safety.

MMC enables faster project delivery through parallel construction processes, reduces reliance on scarce onsite labour, and broadens workforce participation by creating roles suited to different skills and abilities. It also supports better risk management, particularly in relation to weather disruptions, and enhances worker safety through controlled manufacturing environments. In addition, MMC offers clear environmental benefits through improved waste management and the potential to contribute to net zero targets. While cost savings are currently most evident in projects with unique constraints, such as remote locations, there is strong potential for these benefits to scale across a wider range of developments. Standardisation inherent in MMC can also streamline design and approvals, providing more certainty in project feasibility and pricing.

Despite these advantages, regulatory settings are acting as a barrier to businesses seeking to enter, grow, or diversify into MMC.

The current framework has largely been developed around traditional onsite construction and does not align well with offsite manufacturing models. Restrictions vary across the country, but there are limits to the payment a company can receive for work carried out off site.

However, there are some jurisdictions that currently recognise the need for an increased deposit where a portion of the work is carried out offsite. For example, in Queensland, when more than 50 per cent of work is undertaken offsite residential builders can take a 20 percent deposit up from the usual 5 percent for works over $20,000.

Builders and manufacturers must carry substantial upfront costs for prefabrication and materials without receiving payment until installation occurs onsite. This shifts financial risk disproportionately onto MMC providers, creating a strong disincentive for businesses to adopt or scale these methods.

<u>Financial barriers also reinforce these constraints.</u> Lenders are often reluctant to finance projects involving significant offsite construction due to the difficulties in valuing and securing work that is not yet onsite. Although there has been some progress, such as Commonwealth Bank’s assessed manufacturer programs, these are not yet widespread enough to support broader industry transition. The inability to secure finance on reasonable terms creates a structural barrier to entry for new MMC businesses and limits the capacity of existing firms to grow or diversify.

<u>Demand-side factors also inhibit market development.</u> Persistent perceptions of prefabricated housing as being of lower quality continue to affect consumer and developer acceptance, despite significant improvements in modern systems. In some cases, developers explicitly exclude modular construction from their development. Regulatory responses that treat MMC as “different” or require separate approval pathways risk reinforcing these perceptions. This can further entrench market segmentation and discourage firms from transitioning between construction methods or sectors due to uncertainty about market acceptance.

<u>Procurement practices also present a barrier.</u> Many procurement frameworks implicitly favour traditional onsite construction, embedding assumptions that exclude or disadvantage MMC providers. This limits competitive access to projects and reduces opportunities for businesses specialising in offsite methods to participate in tenders. A lack of procurement neutrality restricts the ability of firms to scale and diversify, particularly where government projects could otherwise provide a stable pipeline of work to support industry development.

The planning system adds an additional layer of complexity. Variability in local planning requirements, especially for housing on smaller lots, creates inefficiencies for MMC providers who rely on standardised designs to achieve scale. This fragmentation increases compliance costs and limits the ability of businesses to operate across different local government areas. Similarly, limited availability of appropriately zoned and located land for manufacturing facilities constrains investment in MMC production capacity, further restricting industry growth.

Impact on MMC

Collectively, these factors create a system where regulatory, financial, and market barriers reinforce one another. They increase the cost and risk of adopting MMC, deter new entrants, constrain the growth of existing businesses, and limit the ability of firms to move between traditional and innovative construction methods. Addressing these barriers through regulatory reform, procurement neutrality, consistent planning frameworks, and improved financing support, is critical to unlocking the productivity and supply benefits that MMC can deliver.

The Commonwealth should remove barriers to MMC from procurement frameworks. This action could support further uptake of MMC and assist in the development in capacity that can be later deployed to other sectors of the industry.

Human capital and management capability.

Human capital is a core constraint on the construction industry's capacity to respond to rising housing and infrastructure demand, as well as meeting the needs of other sectors, including health and education. The sector is not confronting a sudden shortage of labour as much as it is set against a structural mismatch, in which demand for labour is rising inexorably, while the training and migration pathways that supply the workforce are not keeping pace. Left unaddressed, the gap is predicted to widen over the next decade.

BuildSkills Australia has estimated a need for approximately 116,000 additional workers to meet National Housing Accord targets, while Infrastructure Australia has estimated an additional 300,000 workers are needed across the infrastructure sector.

The pipeline of workers into the construction sector is also not likely to improve things anytime soon. At the end of 2025, the number of construction apprentices in training was at its lowest level since 2020.

Apprentice numbers are still getting hammered by worryingly high withdrawal rates. During 2025, 28,664 construction apprentices exited their training early and without any qualifications. It means that the number of people who quit construction apprenticeships last year was higher than those who successfully completed their training.

We need more Australians to complete apprenticeships and to get on the tools, backed by a migration system that brings in trade-qualified workers ready to contribute from day one. However, broader reforms and initiatives are necessary uplift the workforce pipeline. These include:

- Improving employer incentives to support SMEs to take on apprentices over a four-year period.
- Extend the $10,000 incentive Key Apprenticeship Program and expand its eligibility to include civil and commercial builders
- Implementation of Stage-Based Retention and Completion Incentive to encourage retainment and decrease early exits
- Ending the 'sieve' effect by embedding entry and exit points within an apprenticeship by endorsing micro credentials to support skill accumulation and re-entry into the industry

- Expanding Fee-Free Vocational Education and Training access currently offered by TAFE to not-for-profit Registered Training Organisations, who deliver better completion rates
- Make permanent the Group Training Organisation Reimbursement Program
- Include Tradies of all Major Groups in the skills in demand pathways, expand the Pacific Australia Labour Mobility (PALM) program and introduce a dedicated Construction Skills Pathway visa.
- Broadening the support for School-Based Apprenticeships and Training and Vet in Schools programs to deliver applied skills and learning within schools.
- Addressing parity of esteem within tertiary education settings by improving careers guidance in schools and ensuring entrance opportunities into tertiary education are complimentary rather than competitive to each other.

Member feedback from Victoria indicates that social procurement frameworks, that are designed to create social, economic, and community benefits alongside value for money, add another administrative burden on the building and construction industry. While Master Builders acknowledges the importance of these benefits, and that building and construction industry provides benefit to Australian society, it is noted that the current social procurement framework in operation in Victoria is having a negative impact, particularly on the 98% of small businesses that make up the construction industry. We would encourage that these practices are reviewed to determine if they are having the desired impact and are delivering the gains they are purported to.

The Queensland Experience

Queensland's comprehensive licensing framework is a barrier to entering, growing and moving between different sectors of the industry. The requirements to demonstrate experience and minimum financial requirements present two of the largest barriers.

Queensland's licensing framework places significant emphasis on demonstrated, verifiable experience as a prerequisite for obtaining and maintaining builder licences. While this is intended to ensure competency and protect consumers, the way experience requirements are structured and assessed can operate as a barrier to business entry and expansion by limiting flexibility in how skills and capability are recognised and deployed.

Experience requirements can make it difficult for new entrants, particularly sole traders, small businesses, or professionals transitioning into contracting, to obtain a licence in their own right. Applicants must typically demonstrate a prescribed period of relevant, supervised experience across specific project types, often supported by detailed documentation and third-party validation. This can be difficult for individuals who have gained skills in less formal settings, interstate, or overseas, where documentation standards may differ. It can also be difficult in regional areas to gain the direct experience where the relevant expertise may be limited locally. As a result, capable practitioners may be unable to qualify for a licence despite having practical competence.

Experience requirements can also constrain firms seeking to expand into new types of work or higher-value projects. Licensing categories are often tied to narrowly defined scopes and require proven experience within each category. Businesses looking to diversify or scale must ensure that nominated supervisors or directors hold the specific experience required for the new licence class, which may necessitate recruiting additional qualified individuals or delaying expansion until experience thresholds are met. This reduces agility and slows business growth, particularly where workforce shortages already make it difficult to attract suitably licensed personnel. The rigidity of experience recognition can also discourage innovation or the adoption of new construction methods that fall outside traditional experience pathways.

Many licences are dependent on nominated individuals who hold the requisite experience. If those individuals leave the business the firm may lose its licence or be unable to operate, even if the broader business retains capability. For small businesses especially, where experience is concentrated in a single individual, this creates fragility and complicates succession planning.

Strict and inflexible experience requirements in Queensland's licensing system reduce labour mobility and slow the circulation of skills across the industry. They lock expertise within existing firms, limit entrepreneurial activity, and make it harder for businesses to respond to changing demand. In the context of housing supply pressures, these constraints contribute to reduced industry capacity by preventing capable professionals from entering the market, limiting firms' ability to scale or diversify, and increasing the risk of abrupt exits. While maintaining high standards is critical, a more flexible and outcomes-based approach to recognising experience could better support business dynamism without compromising quality or safety.

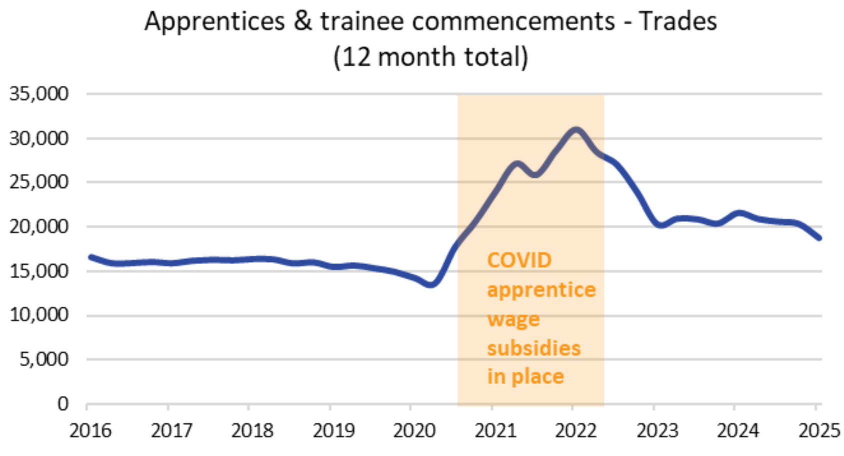
Queensland's regulatory settings around the construction workforce, particularly licensing, apprenticeship requirements, industrial arrangements, and skills recognition, are contributing to the structural workforce shortages. These shortages, in turn, act as a barrier to business by constraining firms' ability to secure and manage labour. This is the most significant barrier reported by Queensland construction businesses. According to Construction Skills Queensland in their latest Horizons report, the average worker shortfall in Queensland through to 2032 is expected to be around 19,100, blowing out to a shortfall of 35,000 work in 2027-28.

Occupational licensing requirements, while important for safety and quality, can limit the available pool of workers by imposing qualification, experience, and registration thresholds that take time and cost to meet. Complexity in recognising overseas qualifications further restrict the supply of labour available to businesses. Migrants in building and construction are in many ways set up to fail by Australia's systems.

The Queensland Building and Construction Commission's rulebook for which qualifications are accepted in assessing a licensing application has not been updated in three years. This presents a real opportunity to both update and extend the recognised qualifications. In particular, including formal recognition for specific overseas qualifications will enable skilled licenced applicants to move through the system more quickly and easily. Building and construction trades would also benefit from a gap training qualification to ensure skilled migrant tradespeople who have a qualification from a comparable jurisdiction can be quickly and comprehensively upskilled for the Australian workforce.

Bringing new people into the industry through apprenticeships and training can be difficult to support due to the administrative burden and the high supervisory costs. Costs that expected to be largely worn by businesses. The result is a marked decline in apprenticeship commencements. While commencements peaked above 14,000 in 2020–21 and 2021–22, during the period that the COVID pandemic apprentice wage subsidies were in place, they have since fallen to 11,800 in 2023–24.[4].

[4] CSQ Training Plan 2025-26



Source: NCVER

Increasingly employers cannot carry the cost and complexity of taking on apprentices, with many walking away from the system altogether. The government can lay a foundation for sustained growth of the construction workforce by providing targeted apprenticeship support. The Queensland Government's $19 million Small Business Apprenticeship Pilot is already providing a valuable foundation but there is more that needs to be done.

Wage subsidies to drive apprentice hiring by employers are needed. A 50% rebate on at least the first-year apprentice wage would meaningfully offset the cost of employing an apprentice and help businesses commit to taking on new apprentices. History shows that when wage subsidies were available during the COVID pandemic, apprenticeship commencements rose sharply, illustrating that reducing employer costs is a highly effective lever for boosting apprenticeship participation.[5]

Industrial agreements and compliance obligations (including awards, safety requirements, and training mandates) also increase labour costs and administrative complexity.

An economic analysis of the impact of the CFMEU Queensland EBA on Queensland construction prices was conducted back in 2024[6]. It found that applying the provisions that included restrictive working hours, rostered days off or union stoppages was adding to the cost of the delivery of new apartments, anywhere between 3.5% and 33.0%.

Together, these factors make it difficult for businesses to secure the labour needed to confidently committee to projects. As a result, firms may decline work, delay projects, or operate below capacity, which dampens productivity and limits responsiveness to housing demand.

Capital markets

Construction in Australia operates with a fundamentally difficult financing model, which puts constant pressure on cash flow and growth.

At its core, contractors must spend cash first and get paid later, operating on a negative cash flow model. They pay for labour, materials and subcontractors upfront, then wait weeks or months for

[5] BuildSkills Australia, Housing Workforce Capacity Study, 2025: p65

[6] https://www.mbqld.com.au/__data/assets/pdf_file/0018/23229/CFMEU-EBA-IMPACT-ON-APARTMENT-PRICES-FINAL-MBA-Version.pdf

progress payments. This creates a situation where even profitable jobs can cause cash shortages. In simple terms, construction companies are often funding projects out of their own pocket.

Getting finance isn't easy either. Many contractors don't have strong asset bases, so lenders focus on cash flow and balance sheet strength rather than collateral. This makes borrowing harder—especially for smaller firms—and often limits how much they can access. When bank funding is tight, businesses turn to more expensive non-bank lenders, which adds further strain.

Another major issue is bonding and bank guarantees. These are required to win work, especially on large or government projects, but they depend on the company's financial strength. This creates a loop: you need strong finances to win big jobs, but you need big jobs to build strong finances, as a result, many firms get stuck at a certain size and struggle to grow.

To plug cash gaps, contractors often use invoice finance or delay payments to suppliers, but this comes at a cost. Invoice finance can be expensive, and pushing payment delays down the chain increases pressure on subcontractors and suppliers. The whole system becomes fragile, with risk spreading across multiple parties.

Even large construction companies face challenges. Compared to other industries, they have limited access to equity and bond markets, because investors see construction as risky—low margins, unpredictable projects, and volatile cash flow.

Overall, the construction financing model is inherently weak. Companies rely heavily on short-term funding, tight cash management, and continuous access to credit. The result is an industry where: Cash flow matters more than profit. Growth is constrained by financing limits

Many businesses fail not because they lose money, but because they run out of cash

Improving construction finance is less about injecting more capital, and more about fixing how cash flows through the system.

Project Trust Accounts - a real world example

Queensland's Project Trust Account (PTA) requirements, introduced with the intention to improve payment security in the construction industry, operate as a barrier across the business lifecycle by increasing financial, administrative and operational complexity.

For those looking to take on work above the thresholds for the first time (over $1M for government projects and over $10M for private projects), PTA requirements create a significant upfront compliance burden. Contractors must establish and manage multiple trust accounts (including project and retention accounts), implement compliant accounting systems, and ensure strict segregation of project funds. This requires a level of financial sophistication, systems capability and administrative resourcing that is an added challenge for builders undertaking work in this segment of the Queensland market. The need to engage accountants or specialist advisors to ensure compliance further increases initial costs.

As businesses grow and take on multiple eligible projects, they must manage numerous trust accounts simultaneously, each with its own reporting, reconciliation and auditing obligations. This creates a substantial administrative load and introduces material compliance risk, with strict penalties for errors or non-compliance, even where issues are inadvertent. The quarantining of funds within project-specific accounts also reduces financial flexibility. Businesses cannot use cash surpluses from one project to support working capital needs on another, which can constrain cash flow, increase reliance on external finance, and limit a firm's ability to take on additional work. This dampens the capacity to respond quickly to market opportunities, particularly during periods of strong demand such as housing supply shortages.

EY review of the performance and efficacy of Queensland's Project Trust Account regime[7] came to the following conclusions.

> *"Complying with the Framework involves additional costs for industry which must set up and operationalise dedicated accounts on a project-by-project basis. This process can be complex to manage, and involves additional banking, legal, and software costs. From 2021 to 2024, EY modelling estimates that the industry has incurred nearly $165 million in additional costs to meet the regime's. This represents an average cost to businesses captured by the regime of around $40,000 per business, although it can be substantially higher if tailored software is purchased and implemented."*
>
> *"Smaller and medium-sized firms, which typically lack the resources to absorb these additional expenses, are disproportionately affected."*
>
> *"The costs to industry have increased due to regulatory 'bracket creep'. Cost inflation of around 30-40% since COVID-19 pandemic has meant that many smaller projects now meet the framework's thresholds. As a result, the Framework has indirectly expanded to include businesses that were arguably outside its original design intent. This expansion has increased the compliance burden for smaller businesses that frequently undertake projects near these thresholds and prevents their scaling up."*

The Framework can "serve to raise the barriers to entry and discourage builders from other states from taking on projects in Queensland".

"The administrative complexity of the framework and audits significantly increases compliance costs and causes delays for head contractors when establishing and managing the trust accounts. This often results in longer payment periods for subcontractors compared to the payment periods prior to the Framework being implemented." [p20]

PTA requirements can also complicate exit pathways. When a business seeks to wind down or is experiencing financial distress, the existence of multiple quarantined trust accounts can make it more difficult to manage cash flow, finalise accounts, and close out projects efficiently. The strict rules governing the release of funds, particularly for retention and disputed amounts, can prolong project finalisation and delay the resolution of liabilities. In insolvency scenarios, the separation of trust funds from general business assets is intended to protect subcontractors but has only proven to add legal and administrative complexity to the winding-up process.

Impact

EY review concluded that the project trust account regime has not improved security payment security for subcontractors, but it has come with considerable compliance costs. The requirements were also promised to reduce contract pricing as risk was removed and yet there have been no observed reductions in contract pricing that can be attributed to trust accounts reducing the risk of non-payment.

[7] EY Parthenon, The performance and efficacy of Queensland's trust account framework , 4 July 2025

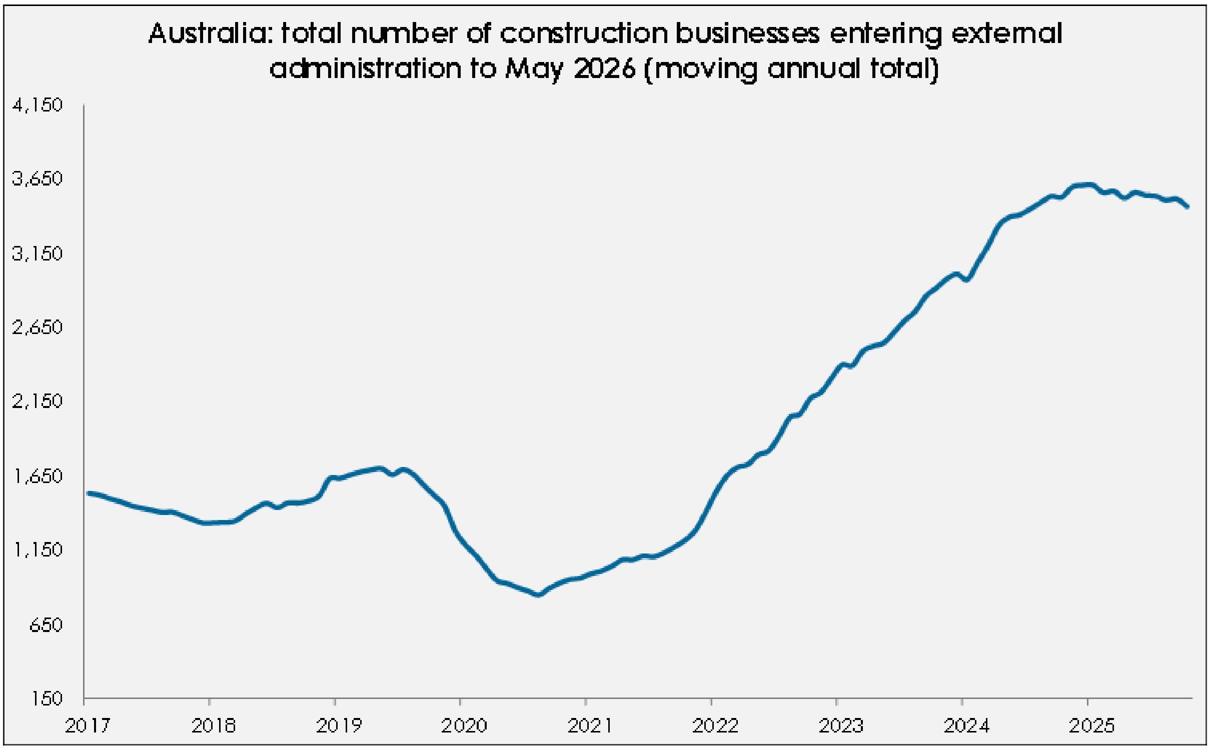
There was some evidence that it helps to encourage a higher level of financial awareness within the industry and supported better record keeping practices. There are, however, less costly mechanisms to achieve this end, such as targeted audits by the regulator (QBCC).

Project trust accounts should be removed as an immediate priority.

The design, operation and integrity of insolvency frameworks

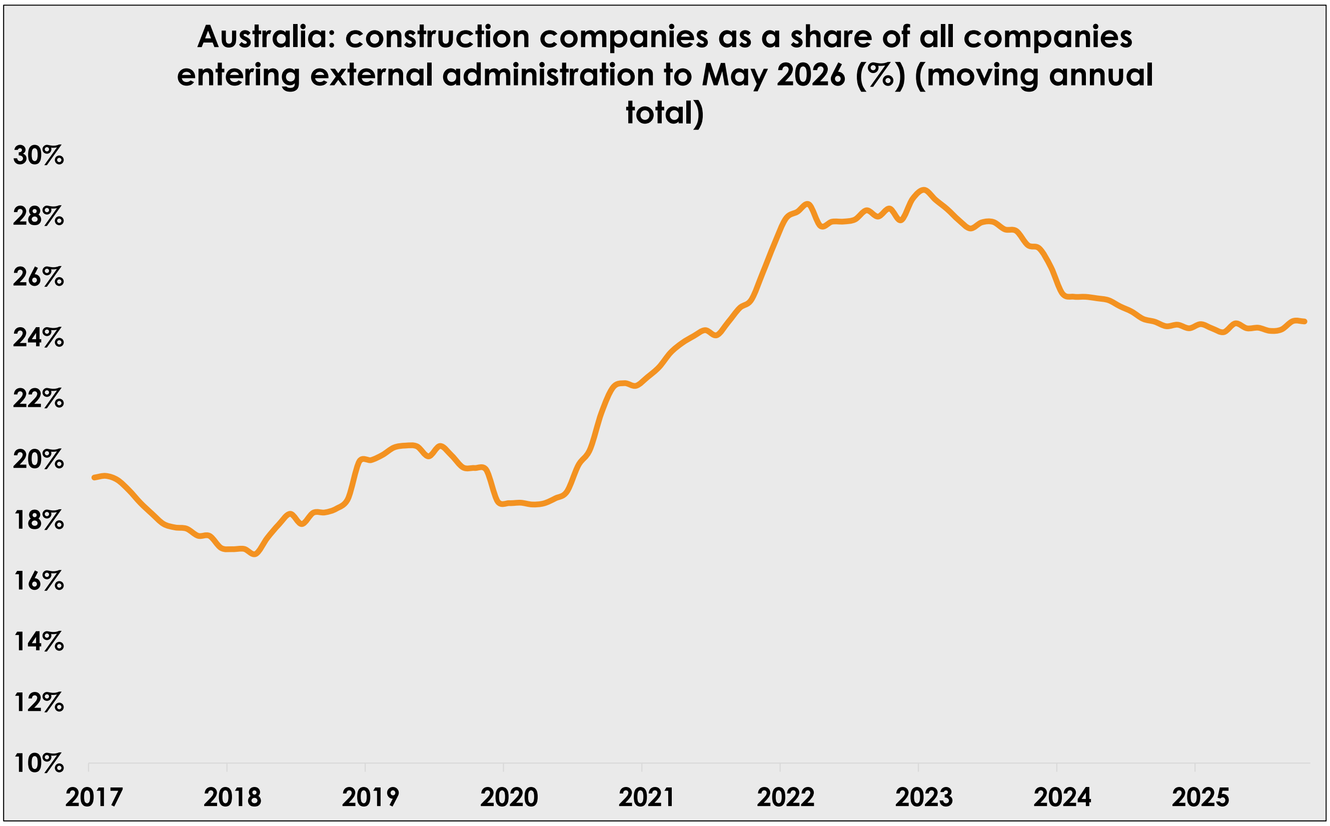
Insolvency in the Building and Construction Industry

Insolvency rates in the building and construction industry have been coming down recently but are still elevated compared to historic levels. As at May 2026, the building and construction industry represented 23% of insolvencies across the broader economy. The share of the economy's insolvencies accounted for by construction has moved steadily lower over the past three years although construction still accounts for more insolvencies than any other industry. This is largely due to the fact that there are more construction businesses than any other industry.



Financial failure for some firms will be an unavoidable consequence of the competitive forces of Australia's market economy. However, rising insolvency rates in a particular industry can lead to contagion effects. This might involve every business in the affected industry being treated with suspicion its customers and suppliers – including financially sound businesses.

As a result, suppliers might restrict or refuse credit sales to businesses or apply higher interest rates while lenders may respond by charging higher interest rates. Customers may be unwilling to pay deposits to businesses in those industries perceived as being at greater risk of insolvency. In this way, the likelihood of essentially healthy businesses experiencing financial distress will increase.



Higher rates of insolvency are a bad thing for productivity in any industry.

The impacts of insolvency in the construction industry, particularly in the residential building industry, can be wide ranging and devastating, but the causes are a result of a complex set of factors including:

- the cyclical ebbs and flows of the sector,
- the unique regulatory environment that applies to the industry across the country, and
- the high proportion of small businesses that operate in the industry.

Further the competitive nature of the industry, the cycles of building activity, restrictive consumer protection provisions together with the costs of complying with complex overlapping state, local and Commonwealth laws and regulations have a considerable impact on business operations, profitability and viability.

Cash flow

The construction industry operates under a fundamentally different cash flow model compared to most other sectors, which creates structurally higher solvency risk. Unlike retail or service businesses that typically receive payment at or near the point of sale, construction firms must usually incur substantial upfront costs—such as labour, materials, and equipment—well before receiving any corresponding revenue. These costs are incurred continuously throughout a project, while cash inflows are delayed through staged progress payments and contractual processes. As a result, construction businesses frequently experience periods of negative cash flow, even on projects that are ultimately profitable.

A defining feature of this model is the extended cash conversion cycle. Construction projects can take several months or even years to complete, and the time between expenditure and payment is significantly longer than in other industries. Estimates suggest construction cash conversion cycles can approach nine months, compared to approximately two to three months in retail and three to six months in manufacturing. This extended cycle ties up working capital for prolonged periods, increasing reliance on external financing or internal reserves to sustain operations. In contrast, many retail businesses benefit from short or even negative cash cycles, where customer payments are received before suppliers are paid, generating positive liquidity.

Compounding this structural challenge are systemic delays in the construction payment process. Payments typically flow through multiple tiers—from client to head contractor to subcontractors—introducing administrative friction and delay at each stage. Industry data shows that payment cycles of 60 to 90 days are common, with widespread delays beyond contractual terms. Additionally, practices such as retention withholding—where 5–10% of contract value is held back until project completion—can further defer cash receipts by 12 to 24 months. These mechanisms effectively force contractors to finance the project on behalf of the client, significantly increasing liquidity pressure.

The consequence of these dynamics is that insolvency risk in construction is driven more by cash flow timing than by underlying profitability. Even where projects are commercially viable, the mismatch between outgoing and incoming cash can lead to liquidity shortfalls that businesses cannot absorb. This is reflected in industry outcomes: a large majority of construction firms report ongoing cash flow stress, and cash flow issues are cited as a leading cause of business failure in the sector. In contrast, failures in other industries are more commonly linked to declining demand or poor margins, rather than structural cash flow delays.

Mandatory insurance

As alluded to above the operation of mandatory warranty insurance under which the insurer provides a completion guarantee to a home owner in the event of a builders' insolvency means that a builder's financial position is consistently monitored by their insurer. Providers of this form of insurance essentially act as a 'quasi regulator'. They monitor the amount of work that can be carried out often placing limits on that work depending on the financial situation of the business.

The operation of mandatory warranty insurance has two significant implications for the broader insolvency regulatory framework.

Firstly, before granting eligibility, an insurer reviews a builder's business history and finances to assess their risk. Insurers impose an annual turnover limit on builders based on their assessment of the value of works that a builder can prudently undertake given their financial position. In some circumstances insurers require financial security or an indemnity of some form before granting eligibility.

Similarly, under the Home Building Act 1989 (NSW) (HBA) any residential construction project over $20,000 must obtain insurance under the Home Building Compensation Fund (HBCF) prior to the receipt of money or the commencement of work. To obtain insurance under the HBCF, a builder must be deemed 'eligible' by iCare. In determining eligibility, iCare examines a range of financial and non-financial information provided by the business to assess the risk of potential threats to solvency.

Secondly, a claim can be made in the event of the insolvency of the builder. For example, in NSW, 'insolvency' can mean the insolvency of an individual under administration, a corporation that is being externally administered or the insolvency of any partners in a partnership. Additionally, if related to any loss that is subject to a New South Wales Civil and Administrative Tribunal order against the builder, insolvency includes the suspension of the builder's licence[2] .

Unfortunately, the definition of 'insolvency' for the purposes of triggering warranty insurance is not the same across the country. Under the Queensland arrangements 'insolvent' includes, 'external administration, including, for example, liquidation, receivership or compromise entered into with creditors, under the Corporations Act or a similar law of a foreign jurisdiction.'[8]

Whether a builder is 'insolvent' may have a different meaning for a state-based consumer protection authority versus the commonwealth insolvency framework. Or, and perhaps more complex, is that they may mean the same thing, however under a commonwealth arrangement there may be a mechanism to support the business trade through such an event which is not recognised at a state level for the purposes of warranty insurance. This outcome would effectively negate options for 'business rescue'.

Overall, the construction industry can be characterised as a working-capital-intensive, project-financed model rather than a straightforward trading business. Contractors effectively act as short-term financiers within the project ecosystem, absorbing timing risk across complex supply chains. This structural feature explains both the higher incidence of insolvency and the critical importance of cash flow management, working capital access, and payment discipline in determining business viability within the sector.

Licensing

The license or registration of a builder can be adversely impacted when an insolvency event occurs.

In order to be licensed most builders (as well as many trade contractors) are subject to strict financial and personal probity requirements. Directors who have controlled an insolvent company may be automatically excluded from consideration or will typically fail the "fit and proper" person requirements.

In Queensland, Section 56AC of the Queensland Building and Construction Commission Act 1991 currently applies to "excluded" individuals and companies. Section 56AC will apply to:

- individuals that take advantage of the laws of bankruptcy or become bankruptcy and 3 years have not elapsed since the bankruptcy event;
- individuals if they were a director, secretary or influential person of a construction company (either at the relevant time or within 2 years before the insolvency event) has a provisional liquidator, liquidator, administrator or controller appointed, or is wound up, or ordered to be wound up and 3 years have not elapsed since the insolvency event;

  An influential person means 'an individual, other than a director or secretary of the company, who is in a position to control or substantially influence the conduct of the company's affairs'.

Under section 56AE, the Commission must not grant a person a licence if the person is an excluded individual for a relevant event, or an excluded company. The Commission must then cancel the licence of an excluded individual or company under sections 56(AF) and 56(AG) respectively. No notice period is applied for cancellations under these provisions.

In South Australia, section 9 of the Building Work Contractors Act provides that an applicant for a building license cannot be insolvent or subject to a deed or scheme of arrangement with or for the benefit of creditors over the last 2 years, or over the last 5 years has not been a director of a company that was wound up for the benefit of creditors.

[8] Section 2, Part 1 of Schedule 6 – Queensland Building and Construction Commission Regulation 2018

The Home Building Act in NSW similarly provides that a license must be cancelled if the holder of the licence becomes bankrupt or insolvent or is a deregistered company (see section 22).

In addition, section 20 provides that a license application must be refused if:

- the applicant has been disqualified under the Act the regulations from holding a contractor licence, or
- a close associate of the applicant who would not be a fit and proper person to hold a license exercises a significant influence over the applicant or the operation and management of the applicant's business. Under the HBA a person is disqualified from holding a license (other than an owner-builder permit) if the person:
- is in partnership with a person who is, or is a director of a body corporate that is, disqualified from holding a license under this Act, or
- is in breach of any provision of this Act or the regulations that is prescribed by the regulations as a disqualifying breach. There are also grounds to refuse an application if the applicant is not a "fit and proper person to hold a licence".

In Western Australia while there is no automatic ban or exclusion for directors/officers of an insolvent company from holding a building practitioner registration in their own individual capacity and/or seeking to obtain registration for themselves or a new company as a building services contractor. This issue is a relevant consideration when it comes to applying for or renewing registration.

Under sections 17 and 18 of the Building Services (Registration) Act 2011 a person must be a fit and proper person to be registered. Under the regulations, in assessing fitness and probity, consideration would be given to the financial background of the applicant, including whether they were ever a director of an insolvent company or have been bankrupt.

Those operating in the residential building industry are placed in the unenviable position of needing to hold a license to trade in order to pay their debts but, if facing insolvency, may be prevented from doing that which would see them move out of financial distress.

The current putative approach

A number of Commonwealth laws in place to address and regulate corporate insolvencies that, in practical terms, act as a strong disincentive for business operators to actively respond when signals of financial distress become apparent.

A company is insolvent if it is unable to pay all its debts when they are due.

Directors must prevent their company from incurring debts where the company is insolvent or becomes insolvent by incurring the debt(s) and at that time, there are reasonable grounds for suspecting the company is insolvent or would become insolvent. Under the Corporations Act 2001, directors have a direct and positive duty to prevent their company from trading if it is insolvent.

There are various penalties and consequences of insolvent trading, including civil penalties, compensation proceedings, criminal charges and/or disqualification from managing a corporation. A company must also keep financial records to correctly record and explain transactions and the company's financial position and performance. A failure of a director to take all reasonable steps to ensure a company fulfils this requirement contravenes the legislation.

Directors' also have fiduciary duties which include the duties to act in good faith and in the best interests of the company, to act for proper corporate purposes and to avoid conflicts of interest. It has been held that the duty of directors to act in good faith and in the best interests of the company includes consideration of the interests of creditors upon insolvency.

Under taxation laws, directors' personal liability may arise where the Commissioner of Taxation issues a Director Liability Notice (DLN) under Section 222AOE of the Income Tax Assessment Act 1936 to the directors at a time when the company has failed to remit tax.

The objectives of these provisions are to ensure that a company satisfies particular income tax obligations or is promptly placed into voluntary administration or liquidation.

Liquidators and external administrators have obligations to investigate causes of failure and identify and report breaches of law to ASIC. This is aimed at ensuring inappropriate director/corporate behaviour is identified and addressed by the party capable of taking disciplinary action, generally the corporate regulator. Liquidators also have powers to investigate and void certain transactions such as unfair preference payments.

If a building or construction company that is also a small business was to utilise a small business restructuring plan, under the Corporations Act 2001, this places the company in "external administration" which acts as a trigger for insolvency and as a result, could lead to the cancellation of a license depending on the jurisdiction of licensee.

This effectively means that building or construction companies that are also a small business are in many cases excluded from small business restructuring plans that benefit other small businesses. This ultimately means that it is more difficult for building and construction small businesses prevent insolvency.

Illegal Phoenixing Framework

Master Builders opposes any industry participant trading insolvent and engaging in illegal phoenixing activities. These behaviours are anti-competitive and erode good behaviours in the industry, not to mention have significant impact on those affected directly by such behaviours.

Master Builders strongly encourages the utilisation of existing laws to deal with illegal phoenixing and insolvency rather than the introduction of additional legislation and penalties should be imposed for actual misuse (leading to phoenixing behaviours) rather than minor administrative non-compliances.

Master Builders has consistently supported the establishment of and implementation of Director Identification Numbers (DINs) to address the issue of phoenixing and to improve accountability of industry participants.

Master Builders would call for further simplification of the administrative functions moving forward together with continued advocacy for penalties to be imposed for actual misuse (leading to phoenixing behaviours) rather than minor administrative non-compliances.

Further simplification of the administrative functions in relation to Director Identification Numbers

Master Builders strongly encourages good law, clear and concise information and guidance being made available and supports the development of appropriate education that supports building resilience in the building and construction industry.