

BUILDER INSOLVENCY AND FINANCIAL DIFFICULTY- CONSUMER SUPPORT

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Australia's building industry faces several ongoing challenges, including shortage of trades and increased costs for materials, as well as sustainability and regulatory compliance complexities, all of which cause the frequency of insolvency events to rise. When builders become insolvent, consumers can be left to deal with unfinished work, major defects, and significant financial outlays to complete work or rectify defects.

If you have hired an individual or company to build or renovate and they become insolvent, it is essential you know what to do. This guide is designed to assist those building or renovating if their builder becomes bankrupt or goes into voluntary administration or liquidation.

What is insolvency?

Insolvency is when a company or person is unable to pay debts when they are due.

Irrespective of whether the builder is a sole trader, a partnership, or a building company, they are unable to operate when insolvent.

Company Insolvency

If the building company is, or is likely to become, insolvent, then the building company may become subject to external administration.

When a construction company is unable to pay its debts, it often enters voluntary administration or the business is wound up through a liquidation process.

In some situations insolvency solutions are sought through a restructuring plan, the goal of which is to reach an arrangement with creditors for the continuation of the business.

The type of external administration depends on whether the building company is able to reach an agreement with the company's creditors to become solvent.

Individual Insolvency

If the individual builder is, or is likely to become, insolvent, the builder may apply for bankruptcy on the builder's own accord or be forced into bankruptcy by way of a petition commenced by one or more creditors'.

If the builder is a sole trader or partnership they may enter bankruptcy or enter into a Part IX (9) (also known as a Debt Agreement) or X (10) agreement (also known as a Personal Insolvency Agreement).

Bankruptcy is a legal process where an individual declares they are unable to pay their debts. It releases the individual from most debts, and a bankruptcy period normally lasts for at least three years.

A **Part IX agreement** is where an individual negotiates to pay a percentage of the combined debt over a period of time. The repayments are made to a debt agreement administrator, rather than individual payments to creditors. After the payments are completed and the agreement ends, the creditors can't recover the rest of the money owed.

A **Part X agreement** is a legally binding agreement between an individual and their creditors, and can be a flexible way to come to an arrangement to settle debts without becoming bankrupt. A trustee is appointed to take control of the affairs and to make an offer to the creditors. The offer may be to pay part or all of the debts by instalments or a lump sum

What action does QBCC take when a builder is, or is likely to become, insolvent?

To ensure public confidence in QBCC's licensing system and to promote security of payment, the QBCC's legislation contains provisions which prevent those responsible for poor financial management from running a business.

Practically speaking, this means that when a construction company has a liquidator, administrator or controller appointed; or is wound up, or is ordered to be wound up; QBCC will exclude the individual directors, secretary or influential persons from holding a licence.

Similarly when an individual who is acting as a sole trader or in partnership becomes bankrupt or enter into a Part IX or X agreement, the QBCC will exclude the individual from holding a licence.

QBCC confirms insolvencies with the Australian Securities and Investments Commission (companies) and Australian Financial Security Authority (individuals). Upon confirmation, QBCC follows a process that can result in suspending or cancelling the builder's licence, depending on the circumstances. The process can include:

- Sending a formal written notice to any directors who hold a licence issued by QBCC, advising of potential suspension or cancellation of their individual licence;
- Assessing any submissions made by the licensee in response;
- In the event that no response is received, proceeding to give the licensee written notice of the decision to suspend or cancel the licence.

Red Flags and Warning Signs for Insolvency

If you suspect that your builder is insolvent, watch out for these signs:

- **Indicators of financial strain** – stoppage of work without explanation, removal of temporary infrastructure (i.e. fencing) from the site, websites becoming inaccessible, workers on the site downing tools, making complaints of non-payment, a lack of consistency in the tradespeople on site completing work;
- **Communication breakdown** – lack of communication or transparency;
- **Delays** – frequent project delays or missed milestones.

What should I do if I suspect my builder is insolvent?

If you think that your builder may be insolvent, you should check their current status and obtain details of the insolvency practitioner:

- If the builder is a sole trader or partnership, conduct a Bankruptcy Register search with [AFSA Bankruptcy Register Search | AFSA](#).
- If the builder is a company, search ASIC's register of companies at: Search Company and Other Registers ([asic.gov.au](#))
- If you are not sure whether your builder is a company, sole trader or partnership, search both.

If the builder is insolvent, you may receive a letter from the insolvency practitioner appointed to administer the affairs of the builder notifying you of what has happened, providing you with information about what to do next. Sometimes, you may not be contacted.

What do I do if I suspect my builder has entered a form of insolvency, but it is not reflected in the registers?

If you suspect your builder is insolvent, and you have unfinished construction work or defects that have not been rectified, consider seeking financial and legal advice.

Ensure that you retain copies of all contracts, communications and relevant documentation with the builder to defend any claims down the track.

What should you do if your builder is recorded as insolvent in the register?

Make contact

If the builder is a company, make contact immediately with the insolvency practitioner that has been appointed to the builder. The insolvency practitioner may not be aware that you have a contract with the builder.

Queensland Home Warranty Scheme

If your contractor becomes insolvent, the Queensland Home Warranty Scheme may have you covered.

When you embark on a building or renovation project, your contractor pays a premium to QBCC to insure the work. The premium amount is collected from you and paid to QBCC by the building contractor, it is included as part of your contract, is paid before work begins, and is compulsory for all residential construction work valued at more than \$3,300 (including cost of materials, labour and GST).

The QBCC would have sent an email with your Notice of Cover and important information if cover was taken out for your contract.

The Queensland Home Warranty Scheme covers you if your contractor fails to complete or rectify defects in the work. This insurance covers costs up to \$200,000 (or \$300,000 if you chose additional cover).

To qualify for a non-completion claim under the Queensland Home Warranty Insurance Scheme, you need to meet the following criteria:

- The contract needs to be for a fixed price;
- The contractor is bankrupt or in liquidation and their licence has been cancelled;
- The contract ended within 2 years of the day work started;
- You must lodge your claim with QBCC within 3 months of the date the contract ended.

It does not include where the contract has reached practical completion, but individual pieces of work have not been finished properly. For these instances, you can apply for assistance through QBCC's defective work process.

For detailed guidance and support, visit the QBCC website or contact us directly. We're here to help you through every step of your building journey, ensuring peace of mind and a successful project completion.

Disclaimer

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