

Media Release

NECA Victoria calls on state government for urgent security of payment reform

9 March 2022: Following the collapse of major contractor ProBuild, which records show had \$311.6 million-worth of trade-related liabilities last year, NECA Victoria has called on the Victorian Government to urgently reform Security of Payment legislation. The local construction industry is bracing itself for more insolvencies as it emerges from two years of pandemic lockdowns and associated pressures.

Subcontractors' concerns with insolvency in the Construction Industry

Pawel Podolski, NECA Victoria, CEO and Executive Director, said: "Current Security of Payments legislation in Victoria has been shown to be wholly inadequate, especially in the aftermath of COVID. It fails to protect contractors and subcontractors from insolvency. The recent collapse of Probuild is an unfortunate yet timely reminder that urgent reform is needed."

"Despite major changes to Security of Payment legislation in NSW, WA and other states over the past decade, Victoria has had little change to its equivalent legislation," continued Mr. Podolski. "Our members who are typically unsecured creditors in these situations are frustrated that their businesses and employees have little or no protection. This has made Victoria's construction industry one of the riskiest places to do business. We are calling on the Victorian government to undertake major reform to protect the small and medium sized businesses that are essential to job creation and our future economic growth."

"After the last two years, many of our local members are already at breaking point. The sudden and devastating collapse of ProBuild is likely to push many small and family-owned electrical and communications sub-contracting firms over the edge. This will lead to a chain reaction of further business failures in the broader supply chain."

Greater Protection for SMEs in the Construction Industry Required

Victorian based SMEs in the construction industry, as well as their employees, need greater protection from insolvency risks. To facilitate this, NECA offers the following recommendations (in order of preference) and urges reform of Security of Payments legislation accordingly:

1. A major review of Victorian Security of Payments legislation, including:
2. A "cascading trust/deemed trust" scheme to apply throughout the contractual chain; or
3. Provision for greater security via retention money trust accounts, throughout the contractual chain.

NECA's **first recommendation** is for a major review of the Victorian Security of Payment legislation. In Victoria, variations must fit one of two categories. The wording of the legislation is complex and confusing, which restricts its effectiveness in protecting SMEs and their employees. NECA recommends that these provisions should be abolished.

NECA's **second recommendation**, which must be included in any major overhaul of the legislation, is a "Cascading Trust/Deemed Trust" scheme, which offers the greatest protection to SMEs. This is where a trust is created, applicable to all persons in the contractual chain. When a party receives monies that are owed to contractors/subcontractors further down the contractual chain, that party becomes personally liable for the misuse of those funds, with potential penalties up to and including jail time. NECA has advocated for the introduction of this measure since the late 1990s.

A **potential alternative** to the above derives from the *Building and Construction Industry (Security of Payment) Act 2021* (WA), which has passed both houses of Western Australia's Parliament and is awaiting proclamation. This Act provides for greater security in the form of retention money trust accounts. The legislation requires retention money to be held in a dedicated trust account with a recognised financial institution for the benefit of both parties.

NECA Victoria has recently written to the Victorian Attorney General on this matter and will continue to engage with the Victorian Government on this important issue. If any Electrical or Communication contractor has been specifically impacted by the recent Probuild administration, and would like to discuss options, they can reach out to advocacy.vic@neca.asn.au

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Notes to editors:

NECA - the National Electrical and Communications Association, is the peak industry body representing the interests of the electrical and communications contracting industry across Australia. We have close to 5,000 member organisations. NECA is run by contractors, for contractors, and represents members in all states and territories of Australia. All our board members – at the national and state and territory level, are electrical contractors. Across Australia we employ and train over approaching [5,000 apprentices](#).

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