

The Importance of Accountants and Lawyers in the Construction Industry

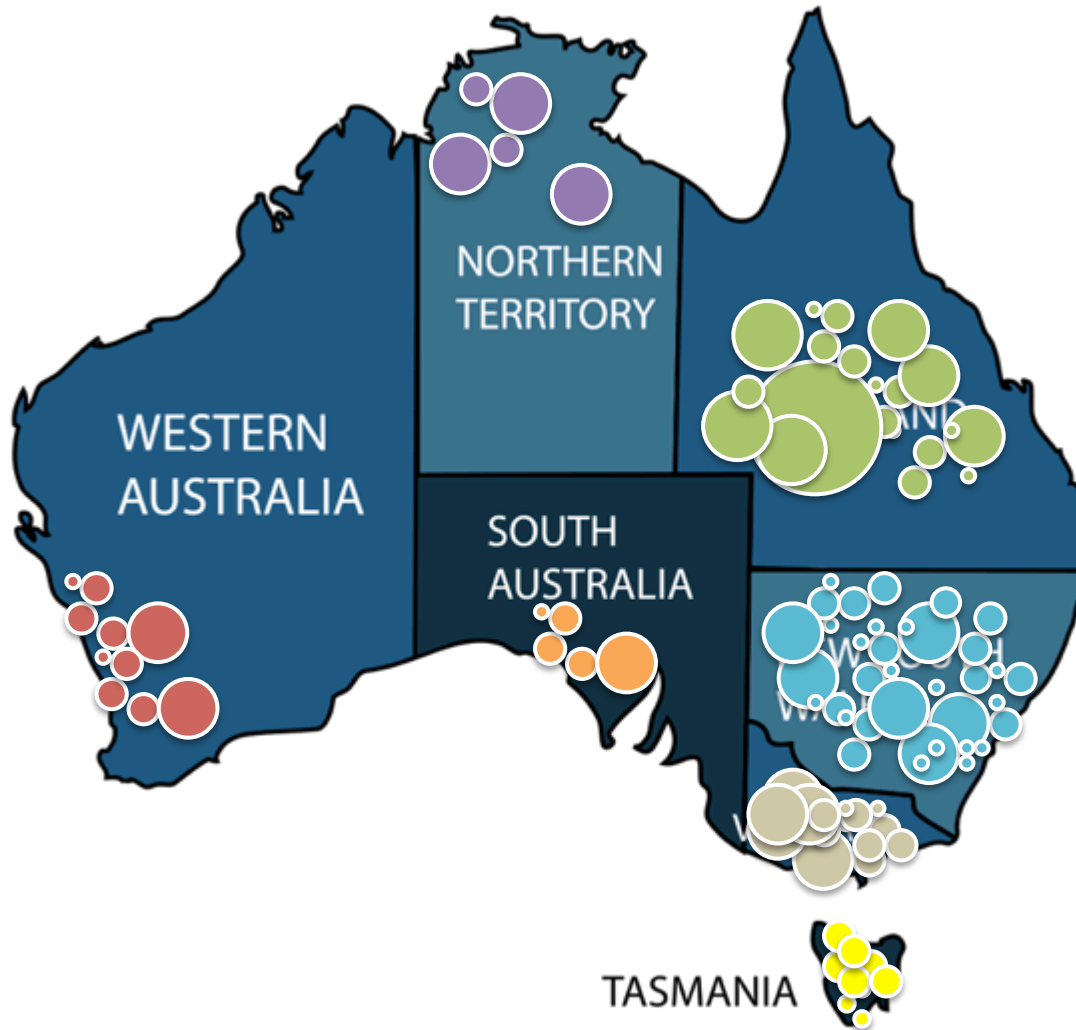


The Importance of Accountants and Lawyers in the Construction Industry



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SECURITY OF PAYMENT LEGISLATION

Key Mechanisms

- strict time limits for submitting and responding to payment claims
- each regime operates on an 'interim basis' to regulate cashflow
- courts can intervene on an adjudication determination in certain circumstances

EAST COAST MODEL	WEST COAST MODEL
<ul style="list-style-type: none">• prescribes a statutory payments scheme that overrides any inconsistent provisions	<ul style="list-style-type: none">• maintains the parties' contractual payment regimes to a large degree, rather than explicitly overriding them
<ul style="list-style-type: none">• dual system that runs alongside a construction contract	<ul style="list-style-type: none">• permits a wider category of claims such as the mining sector
<ul style="list-style-type: none">• strict timeframes to respond to payment claims, otherwise failure to reply will amount to a debt due to the claimant	<ul style="list-style-type: none">• it is primarily concerned with any claim by any party for payment under or for breach of the construction contract



- only **ONE** payment claim can be served for each available reference date
- a payment schedule must be served on the claimant within **10 business days** after receipt of the payment claim

Contracts entered into on or from 21 April 2014



- principals **MUST** pay head contractors within **15 business days** after the head contractor ‘makes’ a payment claim
- head contractors **MUST** pay subcontractors within **30 business days** after the subcontractor ‘makes’ a payment claim
- head contractor to include a supporting statement declaring subcontractors have been paid

New Amendments starting on or about 5 February 2015



- projects where the contract has a 'value' of \$20 million or greater
- retention money trust accounts will need to be established



- a payment claim must be made within **3 months** after the work is carried out
- ‘**excluded amounts**’ include variations, latent conditions and ‘time related claims’ such as delay costs and liquidated damages should not be included in any payment claim



- a payment claim must be made within **12 months** after the work is carried out
- the proposed legislation reduces it to **6 months**

New Amendments start on proclamation date



- introduction of concepts such as '**complex claims**'
- removed nominating authority for adjudications

1999 - 2004

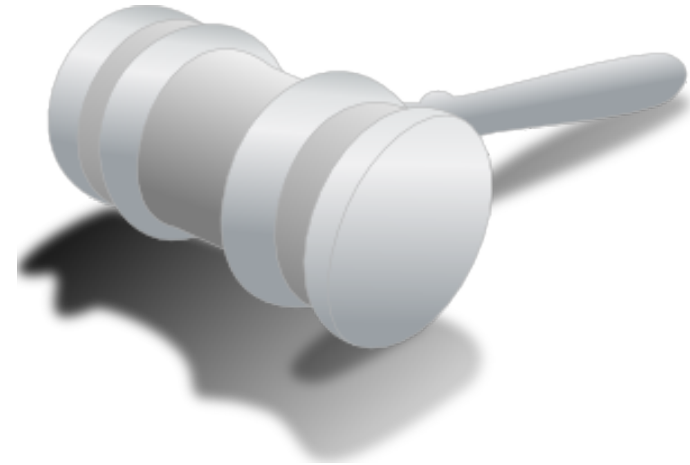
- availability of judicial review unseen

2004 - 2010

- adopted Brodyn's essential requirements

from 2010

- courts have allowed judicial review of adjudication determinations



HOME BUILDING ACT





History

- the *Home Building Act 1989* became the leading legislation in residential building work in NSW
- the Department of Fair Trading replaces the BSC in 1996
- Fair Trading established the Home Building Service in 2003

History

- 2001 HIH collapse – HIH was taken to be an insolvent insurer on 15 March 2011 owing \$800 million to creditors
- part 6A of the HBA was introduced to indemnify the beneficiaries of HIH insurance policy



History



- 2002 shift from 'first resort' to 'last resort'
- 2003 multi-storey building:
 - has a rise of more than 3 storeys
 - contains 2 or more separate dwellings

multi-storey (high-rise) buildings are not required to arrange home warranty insurance in respect of the work
- 2010 NSW self - insurance corporation took over as the sole provider of home warranty insurance

New Amendments commence on or around January 2015

The key amendments include:

Warranties – ‘structural defect’ will change to ‘major defect’ which in ‘lay terms’ is basically a severe defect

Major defects include:

- load bearing components of the building
- fire safety systems
- waterproofing



NEGLIGENCE OF BUILDERS

Bryan v Maloney (1995)

- in 1970 the builder (Bryan), who was the appellant at the High Court and the defendant in the first hearing, built a house for his sister-in-law, Mrs Manion
- Mrs Manion sold the house to a couple, who in turn sold it in 1986 to the owner and respondent, Mrs Maloney
- cracks in the walls were found due to the builder's failure to adequately build footings that would withstand the changes to the foundations
- the High Court majority held that the relationship between a builder and a subsequent purchaser of a residential property was sufficient to attract a duty on the part of the builder to take reasonable care to avoid reasonably foreseeable economic loss

Woolcock Street v CDG (2004)

- The concept of ‘vulnerability’ is limited
- Distinguished concept of residential and commercial
- Builders not liable to subsequent purchasers of commercial premises

*Brookfield Multiplex v Owners Corp
SP61288 (Chelsea Apartments)*

- no duty of care owed to the developer or owners' corporation
- the contracts for the construction and sale of apartments sets out adequate protection
- no 'vulnerability' found



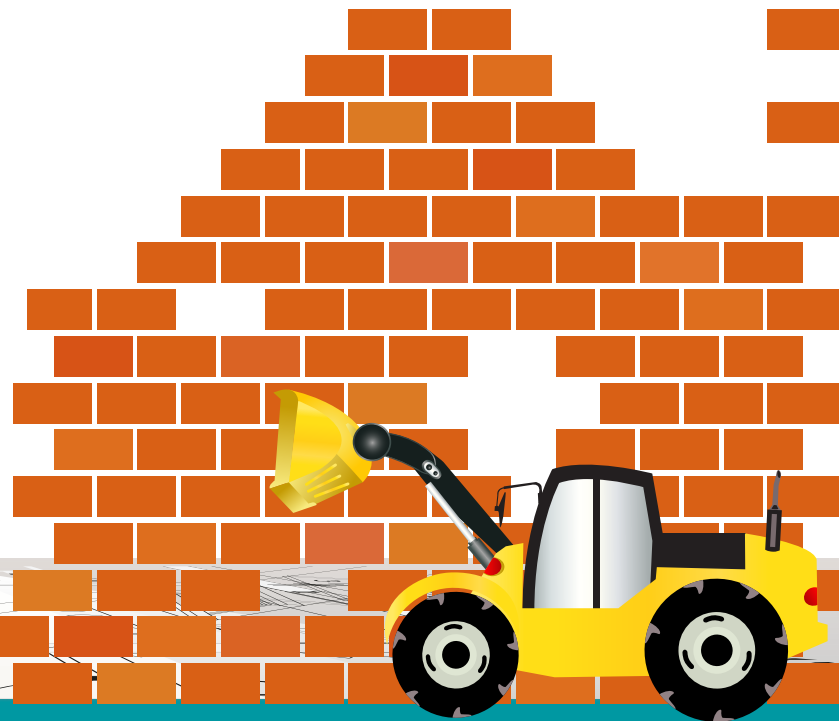
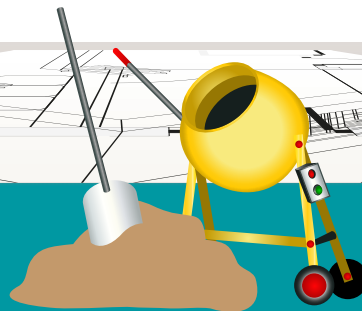
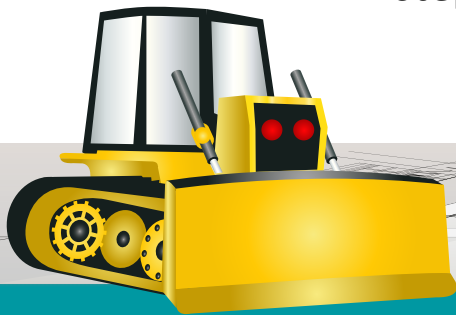
PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

- PPSA commenced on 30 January 2012
- provides a single national system for the creation, registration, priority and enforcement of security interests in personal property



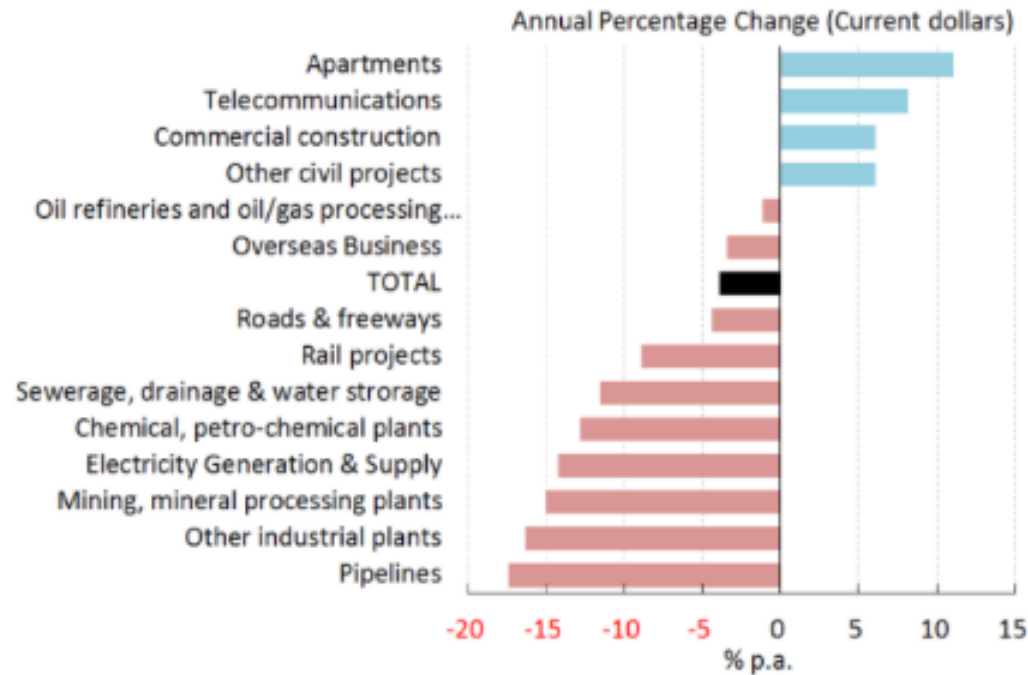
PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

- expressly excludes dealings in land or ‘real property’ but PPSA may still effect certain aspects of the construction industry:
 - brick to real estate
 - temporary equipment such as scaffolding
 - step in rights



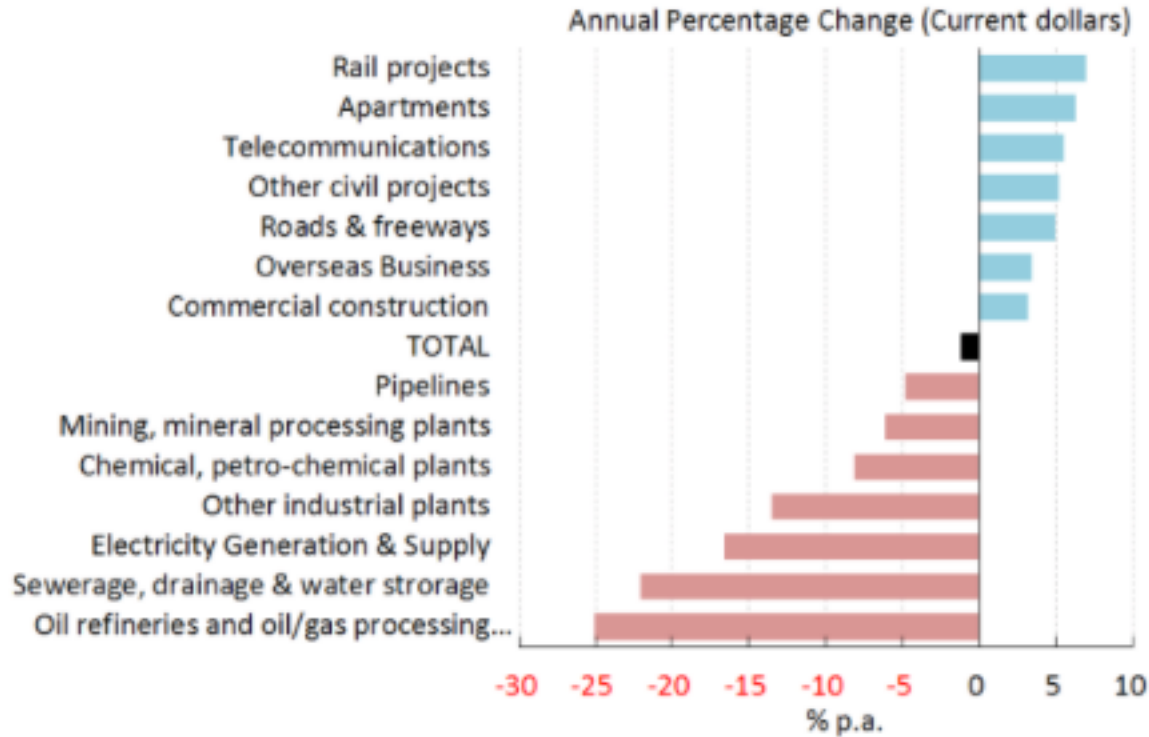
CONSTRUCTION FORECAST

2014-15 FORECASTS



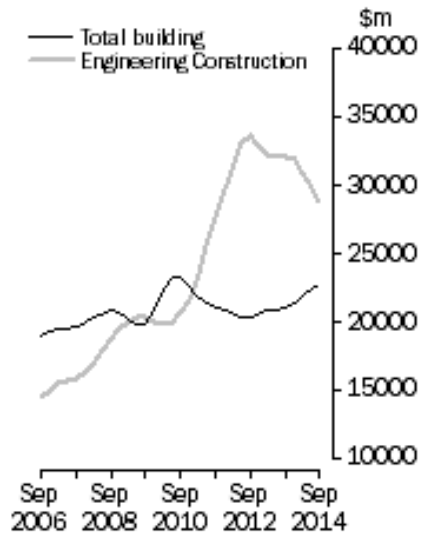
See *Construction Outlook report* by Australian Industry Group

2015-16 FORECASTS

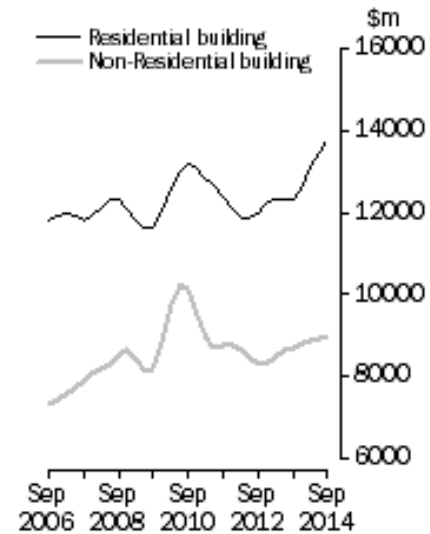


See Construction Outlook report by Australian Industry Group

Value of construction work done, Chain Volume Measures - Trend estimates



Value of building work done, Chain Volume Measures - Trend estimates



SEPTEMBER KEY POINTS

QUESTIONS?



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