



national
electrical and
communications
association

Improving the ACT Building Regulatory System

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About NECA

The National Electrical and Communications Association (NECA) is the peak industry body for Australia's electrical and communications contracting industry, which employs more than 145,000 workers and delivers an annual turnover in excess of \$23 billion. We represent approximately 4,000 electrical contracting businesses across Australia.

NECA represents the electrical and communications contracting industry across all states and territories. We aim to help our members and the wider industry to operate and manage their business more effectively and efficiently whilst representing their interests to Federal and State Governments, regulators and principle industry bodies such as the Canberra Business Chamber, Australian Chamber of Commerce and Industry (ACCI) and Standards Australia.

Additionally, NECA maintains responsibility for the employment, training and skilling of more than 4,000 current and future electricians and contractors through our Group Training and Registered Training Organisations.

Foreword

Thank you for the opportunity to provide comment to the Improving the ACT Building Regulatory System consultation.

In Australia, sub-contractors are responsible for between 80 per cent and 85 per cent of all construction work, the highest involvement of sub-contracting in the world.¹

Moreover, electrical contractors arguably provide the highest value inputs of all sub-contractors by way of fixtures, fittings and labour.

The majority of electrical contractors are also SMEs – small family owned and run businesses – who are particularly susceptible to issues raised in the consultation, for example timeliness of payment.

It is therefore vital that the interests of NECA members are adequately taken into consideration by the Environment and Planning Directorate as part of the review.

This submission outlines NECA's positions in respect of:

- Builders and building surveyors licensing;
- Building inspections;
- Retention trusts;
- Security of payment;
- Project bank accounts;
- Alternative dispute resolution; and
- Phoenix companies.

These are also summarised at the end of the document.

¹ P.12, *Insolvency in the Australian Construction Industry*, Australian Senate Economics References Committee, December 2015

Should you wish to discuss further, I can be contacted on telephone: 02 9439 8523 or email: suresh.manickam@neca.asn.au

Yours faithfully



Suresh Manickam
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Builders and building surveyors licensing

Harmonisation of licensing across states and territories

The issue of harmonisation of building licensing across the states and territories was not raised in the discussion paper.

However, it is an issue that we believe should be borne in mind when considering building licensing changes in individual states and territories.

NECA has strongly advocated for a mutually recognised, licensing scheme for both electricians and electrical contractors, based on the national drivers licence system.

The ability for business to freely operate across Australia's state and territories is critical for the electrical contracting and communications industry.

In July 2008, the Council of Australian Governments (COAG) agreed to pursue wide ranging regulatory reform and at its meeting of 3 July:

“... acknowledged that Australia's overlapping and inconsistent regulations impede productivity growth. Without change Australia's future living standards would be compromised, the competitiveness of the economy reduced and our ability to meet the challenges posed by an ageing population diminished.”

COAG's agreement included the development of a national trade licensing system to be applied to seven occupational areas (including both the electrical industry and building and building-related occupations), and the creation of the National Occupational and Licensing Authority (NOLA) to oversee proposals.

However, a subsequent agreement on a national licence system failed to materialise, in part due to a lack of inclusion of proper standards for safety and compliance and the involvement of a wide range of industry sector and state regulator differences, which rendered the process too complex and ineffective.

Whilst individual state licensing agreements have not stopped electrical contracting firms from conducting operations across state and territory boundaries, it is clear that a lack of mutual recognition of cross jurisdictional licenses continues to act as a barrier to entry and is an unnecessary cost and red-tape impediment for businesses within our industry.

These arrangements are particularly difficult for businesses operating across multiple jurisdictions and for those working in border areas, as a licensee must meet different non-skills requirements and pay a separate licence fee for effectively the equivalent licence(s) in each jurisdiction.

Small and medium enterprises within our industry bear a significantly larger proportion of administrative costs for compliance across multiple licensing regimes and these costs are often passed on to the consumer.

A study arising from the COAG agreement in 2008 highlighted 111 specific occupational licenses within the Electrical contracting industry (Electricians and Electrical Contractors) across Australia's eight jurisdictions. Once Building and related and Air Conditioning are added, 439 occupational licenses existed (see table below).

Occupational licences – Electrical contracting industry, by State and Territory

Occupational Group	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Total
Electrical (Occupational & Contractor)	13	11	25	12	18	9	7	16	111
Building & building related	50	32	84	7	102	22	12	4	313
Air Conditioning	6	1	3	-	4	1	-	-	15
Total	69	44	112	19	124	32	19	20	439

Automatic Mutual Recognition

From December 2014, electricians from Queensland, Victoria and New South Wales can perform electrical work interstate with their home state licence under the Automatic Mutual Recognition (AMR) scheme, helping to streamline business arrangements for electrical contractors.

Unfortunately, The Australian Capital Territory (ACT) has not agreed to enter this mutual arrangement. Electricians or contractors wishing to perform electrical work in the ACT they must obtain an electrical licence issued by our jurisdiction. Section 35 of the Construction Occupations (Licensing) Regulation 2004 allows certain occupation workers to perform work unlicensed in the ACT, however, this does not include electricians.

However, the ACT does allow a person licensed in an occupation in a state or territory to apply for mutual recognition of their licence in another state or territory, where the occupation applied for is substantially the same. For electricians, this will allow for individual use but not by corporations or partnerships and apply to just one interstate licence of the person's choosing.

NECA advocates that the ACT Government gives consideration to the increased harmonisation and mutual recognition of electrical licences across other jurisdictions. Initially, mutual recognition could bring the ACT into line with legislation adopted by the State Governments of Queensland, New South Wales and Victoria prior to a review of the licensing regime for builders and building-related occupations across other states and territories. However, this must not dilute safety standards and technical expertise.

Qualifications required for new licence applicants

NECA supports reforms to the licensing of builders whereby mandatory qualifications for new applicants should be revised to only include qualifications with sufficient content in building or construction management (as raised on page 15 of the discussion paper). It is essential that licensees have sufficient practical and relevant knowledge and skills.

This will mitigate against the risk to NECA members that they do not get paid due to builders becoming insolvent. Poor management / financial and business acumen is a principal cause for insolvencies in the construction industry, as the table below, derived from ASIC data, demonstrates.

Nominated causes of failure – construction industry (2013/14)

Causes of failure	Number reported	Per cent (%)	# Rank
Inadequate cash flow or high cash use	1,000	18.6	1
Poor strategic management of business	892	16.6	2
Trading losses	698	13.0	3
Poor financial control including lack of records	660	12.3	4
Other	611	11.4	5
Poor economic conditions	558	10.4	6
Under capitalisation	435	8.1	7
Poor management of accounts receivable	336	6.3	8
Dispute among directors	52	1.0	9
Industry restructuring	50	0.9	10
DOCA failed	35	0.7	11
Fraud	30	0.6	12
Natural disaster	17	0.3	13
Total	5,374	100	

Source: Initial external administrators' reports lodged with ASIC, as cited on page 17 of *Insolvency in the Australian Construction Industry*, Australian Senate Economics References Committee, December 2015

According to the administrators' reports lodged with ASIC, a total of 35.1 per cent of administrators cited poor management / financial and business acumen (comprising the categories: poor strategic management of business; poor financial control including lack of records; and poor management of accounts receivable) as the nominated cause of the business failing.

The impact of construction industry insolvencies is considerable. Insolvent businesses in the construction industry in Australia had a total shortfall of liabilities over assets for their creditors of at least \$1.625 billion in 2013/14.²

² Page 47, *Insolvency in the Australian Construction Industry*, Australian Senate Economics References Committee, December 2015

We estimate that the equivalent figure for the ACT would therefore be in the order of at least \$33 million for 2013/14.³

Sub-contractors are particularly disadvantaged as they are generally unsecured creditors. There is no current legal mechanism for sub-contractors to be included as a special type of unsecured creditor. As such, they are not entitled to be paid from an insolvent estate until all secured creditors and priority unsecured creditors have been paid.

NECA supports reforms to the licensing of builders whereby mandatory qualifications for new applicants should be revised to only include qualifications recognised to include sufficient content in building or construction management.

Building experience

NECA supports the proposed measures (raised on page 16 of the discussion paper) that:

- New class A and B licenses be developed to exclude work on residential buildings for applicants who lack sufficient experience with those buildings; and
- Applicants could also be required to demonstrate experience across all critical stages of a project.

We consider these measures appropriate and likely to lead to a reduced level of problems and disputation in respect of residential construction.

³ Based on the ACT's share of Australian construction in *Catalogue 8752.0 Building Activity, Australia*, Australian Bureau of Statistics, January 2016

NECA supports the proposed measure (raised on page 16 of the discussion paper) that:

- **New class A and B licenses be developed to exclude work on residential buildings for applicants who lack sufficient experience with those buildings; and**
- **Applicants could also be required to demonstrate experience across all critical stages of a project.**

Stage inspection and on-site supervision

NECA has strongly advocated for the stamping out of non-conforming electrical parts and product sales that fail to meet Australian Standards.

The professional reputation of our industry is compromised through the weakening of safety standards, property damage and the potential endangerment of human life when non-conforming products remain on sale.

NECA therefore calls upon the ACT Government to consider the inclusion, in any guidelines developed for builders carrying out inspections, of a requirement to ensure that only conforming building products are used. The option of the development of guidelines is raised on page 11 of the discussion paper.

Similarly, the proposed expanded and integrated inspection / audit program (mentioned on page 12 of the discussion paper) should include checks that only conforming building products are used.

Dangers of non-conforming products

The trade in counterfeit and non-conforming products poses a clear threat to the viability of Australia's electrical contracting sector. This threat manifests itself as follows:

- The risk of electrical fire and shocks;
- The potential of death or serious injury to installers and the public;
- Property damage and rectification;
- Legal liability issues;
- Expenses relating to the provision of replacement products;
- Insufficient insurance products and resultant premium increases;
- Industry brand and / or reputational damage;
- Cost to businesses operating with the supply chain of the electrical sector; and
- Consumer confidence.

Examples of recent product failures

Recent product failures such as Infinity, Olsent Cables and E-Cables, coupled with the tragic death of a woman on the New South Wales Central Coast in 2014 following electrocution from a non-compliant USB charger, have amplified our concerns. Further, the problem has deteriorated to such an extent that the Australian Competition and Consumer Commission (ACCC) is now actively involved with and monitoring product recalls.

These product failures have not just been limited to the Infinity and Olsent incidents. In recent times there have been a range of other examples where product failure and / or administration failure has led to regulatory intervention, these include:

- Federal Government Pink Batts Home Insulation;
- Mr Fluffy Asbestos (particularly in the ACT);
- Avanco DC Isolators;
- HPM products NSW; and
- Faulty USB charger causing electrocution in NSW.

Residual Current Devices

Residual Current Devices (RCDs) are an example of a product which requires additional resources to be committed to ensuring their quality and conformance to Australian Standards.

RCDs act as a safety switch by monitoring the flow of electricity from the main switchboard and prevent electrocution and the risk of fire by quickly cutting the electricity supply if an imbalance in the current is detected. It is now compulsory across most states and territories for two RCDs to be fitted to all newly constructed homes to protect the power and lighting circuits as part of the electrical installation.

With the increased reliance upon the use of the RCDs to prevent electrocution and fire risk, complacency may exist on the presumption that the RCD is made of sufficient quality.

If this safety component is compromised through non-conformance, the risk of electrocution, fire or death is significantly increased.

Costs associated with product failures

The recall of Infinity and Olsent branded electrical cables installed in houses and buildings across Australia between 2010 and 2013 was initially expected to cost businesses around \$80 million. However, more recently released estimates from the ACCC have revised this figure to approximately \$100 million. Further, approximately 20,000 properties are said to have been installed with Infinity and Olsent branded cables, according to the ACCC.⁴

Australian Senate Economics References Committee inquiry into non-conforming building products

Due to these dangers above, NECA has joined with a range of leading building and construction industry peak bodies to call for more government funding and enforcement in relation to non-compliant building products, as part of the current Australian Senate Economics References Committee inquiry into non-conforming building products. The inquiry's report is due on 16 March 2016.

***Does it Comply?* campaign**

In 2013, NECA in conjunction with Voltimum, one of the world's leading electrical industry information portal and Standards Australia, developed and instigated the *Does it Comply?* Campaign. This campaign focuses on the removal of unsafe and non-compliant products across the electrical sector. As part of the campaign, NECA and Voltimum conducted an industry survey to gain an understanding of the seriousness of the issue of non-compliant product and attitudes across the industry and towards this problem. The

⁴ John Rolfe, Infinity cable recall too slow, ACCC fears only fires will stir consumers into action, *Daily Telegraph*, 26 March 2015: <http://www.dailytelegraph.com.au/news/opinion/infinity-cable-recall-too-slow-accc-fears-only-fires-will-stir-consumers-into-action/story-fnlrw4is-1227278718234>

survey results indicated that over 75 per cent of respondents had seen the installation or sale of non-conforming electrical product in the Australian market.

Does it Comply? enabled the creation of the Electrical Industry Charter, an alliance of major industry partners who are committed to selling and using only genuine and compliant products.

Contribution of the construction industry to the ACT economy

According to the Australian Bureau of Statistics (ABS), the contribution of the construction industry to industry gross value in the ACT added was the second largest (10.4%) for any industry as at June 2014, behind only public administration and safety (see table below).

Top 10 industries by contribution to industry gross value added, ACT – June 2014

Ranking	Industry	% of total industry value added
1	Public administration and safety	31.6
2	Construction	10.4
3	Professional, scientific and technical services	9.1
4	Ownership of dwellings	8.4
5	Education and training	7.2
6	Health care and social assistance	6.3
7	Financial and insurance services	3.7
8	Electricity, gas, water and waste services	3.1
9	Accommodation and food services	2.9
9	Retail trade	2.9
10	Rental, hiring and real estate services	2.7
Source: ABS Catalogue 5220.0 - Australian National Accounts: State Accounts, 2013-14		

Given the size of the building and construction sector in the ACT and around Australia, it is critical that safeguards are in place to ensure that damages do not flow to industry or consumers as a result of non-conforming building products.

Need for greater government enforcement

A key concern for the electrical contracting sector is the lack of government enforcement, at all levels, of those businesses importing non-compliant products. This is further compounded by the effectiveness (or otherwise) of the current product batch-testing regime that seeks to ensure that Standards are adhered to.

NECA advocates that the ACT Government:

- **Considers the inclusion in any guidelines, developed for builders carrying out inspections, of a requirement to ensure that only conforming building products are used; and**
- **The proposed expanded and integrated inspection / audit program should include checks to ensure that only conforming building products are used.**

Retention Trust Money Account legislation

NECA is strongly supportive of a requirement that retention trusts be established in order to provide protection to sub-contractors owed payments.

Our preferred option is that trust funds should be established by head contractors (Option 1 on page 26 of the discussion paper).

This has the advantage of protecting sub-contractors in the event of insolvency.

Additionally, another advantage is that this option minimises the risk of contractors using the funds for purposes other than paying sub-contractors. NECA members have reported that this is a significant issue, with head contractors in some cases using funds earmarked for sub-contractors for speculation in the short-term money market.

NECA supports the introduction of mandatory retention trusts in order to provide protection to sub-contractors owed payments.

Legislation introducing a low cost, Retention Money Trust Account scheme should be established across all state and territory jurisdictions, similar to those available in the real estate industry and legal profession. The scheme should be administered by a Government department to reduce costs and burdens and create a level playing field for industry.

Threshold for retention trust scheme

The New South Wales government has amended the Building and Construction Industry *Security of Payment Act 1999 (NSW)* such that head contractors must now establish trust accounts to hold retention money under subcontracts for projects with a value of at least \$20 million. This regulation came into effect on May 1st 2015 and affects contracts entered into after this time.

NECA NSW had however argued for a significantly lower threshold of \$1 million, as this would provide SME electrical contractors with much greater protection. This is appropriate given the fact that the majority of businesses in the industry are in fact SMEs.

According to Australian Bureau of Statistics data, small businesses (0–19 employees) employ a clear majority of persons in the building and construction sector in Australia (62 per cent), followed by medium size businesses (20–199 employees) with 19 per cent and large size businesses (200 or more employees) with 19 per cent.

This lower threshold of \$1 million is particularly appropriate for the ACT, given the smaller average size of construction projects in the ACT compared to NSW.

NECA advocates that the threshold for the retention trust scheme should be set for construction industry project work to a value of \$1 million.

Administration of the retention trust scheme

In our view, this should be administered by the ACT government, in order to reduce the administrative burden on business as well as create a known and level playing field via a consistent and transparent approach. The interest earned by the investment of the funds held in trust could be used to recoup the costs of the scheme.

NECA advocates that the retention trust scheme should be administered by the ACT Government, with the interest earned by the investment of the funds held in trust could be used to recoup the costs of the scheme.

Automatic return of retention money to sub-contractors

NECA advocates that, at the end of the 12 months defect liability period, the head contractor should automatically return the money to the sub-contractor. This would free sub-contractors from having to make an application to have the retention returned.

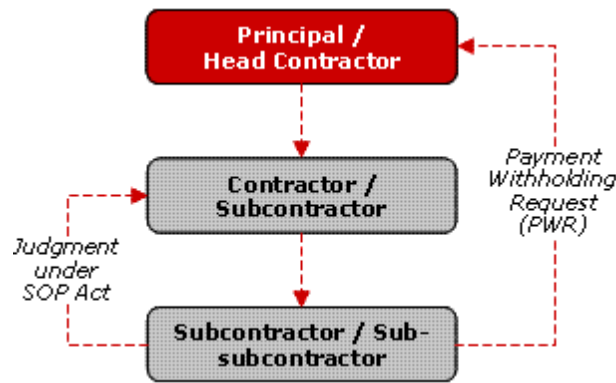
NECA advocates that, at the end of the 12 months defect liability period, the head contractor should automatically return the money to the sub-contractor. This would free sub-contractors from having to make an application to have the retention returned.

Payment Withholding Requests

In New South Wales, changes to the Act in 2012 now allow sub-contractors to serve a payment withholding request (PWR) on a principal at the same time it serves an adjudication application on the respondent/contractor.

Upon receiving a PWR, the principal must withhold from any amount payable or that becomes payable to the respondent/contractor which includes an amount in respect of the work done/services provided by a claimant/sub-contractor, an amount commensurate to that claimed by the claimant/sub-contractor. If the principal fails to comply with this request, it will become jointly and severally liable with the respondent/contractor for the amount owed to the claimant/sub-contractor.

The amendments are designed to work anywhere up and down the contractual chain, and therefore the obligations on a contractor would vary depending upon where that contractor sits in relation to the party entitled to issue the PWR. The basic contractual chain is illustrated in the diagram below.



A PWR must be served by a claimant/sub-contractor who has made an adjudication application for a payment claim and include a written statement by the claimant in the form of a statutory declaration that it genuinely believes that the amount of money claimed is owned to the respondent by the claimant. Upon receipt of a PWR, the Principal Contractor must retain out of money that is or becomes payable:

- The money owed downstream to its immediate subcontractor (which is the respondent in the adjudication), the amount of money to which the payment claim relates; or
- If the amount of money owed by the Principal Contractor is less than the amount to which the claim relates, retain that amount.

Payment Withholding Request legislation – that allows the Principal/Head Contractor to be more easily served with a claim for payment – should be adopted across all states and territory jurisdictions.

Security of payment – progress payment claims

Electrical contractors are often the last in the credit line to receive payment for work completed, in the event of a construction firm facing financial difficulties. Worse still, in cases where the company falls into receivership, electrical contractors often do not receive payment at all.

Of critical concern to NECA is that the majority of electrical contractors are SMEs – small family owned and run businesses.

Further, it is arguably the case that of all sub-contractors, electrical contractors provide the highest value inputs by way of fixtures, fittings and labour – therefore making electrical contractors the most vulnerable with respect to payments in the event of receivership. In other words, electrical contractors are at a greater disadvantage than any other sub-contractor.

NECA strongly advocates that a maximum time period for payment of a progress claim be set at 30 days (as opposed to 30 business days) should be legislated. This is as per the recommendations of the Inquiry into Construction Industry Insolvency in NSW ('Collins Inquiry').

NECA strongly advocates that a maximum time period for payment of a progress claim be set at 30 days (as opposed to 30 business days) should be legislated.

Project bank accounts

While not canvassed in the discussion paper, NECA advocates that the Environment and Planning Directorate considers the merits of project bank accounts (PBAs) for selected government sector construction contracts in the ACT.

PBAs have the potential to complement security of payment laws.

The use of PBAs for contract payments is currently being trialled on selected government sector construction contracts in NSW, with the two-year trial scheduled to end shortly (January 2016).

A PBA is a bank account opened and maintained by the head contractor, into which the principal deposits contract payments. Simultaneous payments are then made from the PBA to the head contractor and sub-contractors (including suppliers and consultants). The difference between a PBA and a “normal” bank account is that a PBA has trust status established through a Trust Deed.

Due to its trust status and the simultaneous payment of moneys to the head contractor and sub-contractors, the PBA offers a higher level of protection for sub-contract payments than traditional payment mechanisms.

The purpose of the PBA arrangement is to ensure, as far as possible, that money paid to the head contractor for work undertaken by sub-contractors is passed on promptly. The trust status of the PBA prevents money paid to the head contractor from being used for other purposes or, in the case of a head contractor’s insolvency, being available to an administrator or liquidator.

In the NSW trial, consistent with the *Building and Construction Industry Security of Payment Act 1999*, the principal has 15 business days to pay against a valid payment claim from the head contractor. Funds must therefore be released from the PBA within 15 business days after the payment claim is served. The bank must receive the signed authorisation in time to comply with this requirement.

A trial in the ACT could be informed by the NSW trial. Alternatively, the ACT government could maintain a watching brief on the results of the NSW trial once it has been completed and then make a decision on whether or not to introduce PBAs in the ACT.

NECA advocates that the ACT government considers the introduction of project bank accounts for government construction contracts in the ACT, in light of the results of the NSW trial, or alternatively conducts its own trial of PBAs.

Alternative dispute resolution

NECA advocates that the ACT government ensure that any alternative dispute resolution mechanisms established for residential building in the ACT are quick and cost-effective.

Our primary concern is that payment to sub-contractors is not delayed unnecessarily.

NECA advocates that the ACT government ensure that any alternative dispute resolution mechanisms established for residential building in the ACT are quick and cost-effective.

Any alternative dispute resolution mechanisms should seek to expedite payments to sub-contractors so that they are disadvantaged as little as possible due to disputes between builders / head contractors and consumers.

Phoenix companies

The issue of illegal phoenix activity should be monitored and addressed as appropriate. This practice became prevalent in NSW approximately a decade ago and should not be allowed to flourish in the ACT.

The Australian Senate Economics References Committee's report *Insolvency in the Australian Construction Industry* cite a recent PricewaterhouseCoopers study which estimates that illegal phoenix activity (across all industries) imposes costs of between \$1.79 billion and \$3.19 billion per annum in Australia. Given the over-representation of construction businesses in insolvencies and phoenix activity, it is likely that the construction industry is responsible for a substantial proportion of this cost.⁵

NECA advocates that a focus on both the corporate entity as well as office bearers is necessary in order to identify and address those engaged in phoenix activities.

Industry participants are often the first to become aware of alleged illegal phoenix activity. In light of the importance of information in identifying and detecting illegal phoenix operators, NECA considers that more effort needs to be made to regularise information flows between industry participants and the regulators.

Additionally, if industry participants are reluctant to inform the regulators for fear of commercial consequences, confidential tip-off lines, or equivalent measures, should be developed.

NECA welcomes cooperation across government agencies in respect of addressing phoenix activities, for example the Phoenix Taskforce, the Inter-Agency Phoenix Forum and the Phoenix Watchlist. We consider that ACT agencies should liaise with these entities as appropriate.

⁵ Page xx, *Insolvency in the Australian Construction Industry*, Australian Senate Economics References Committee, December 2015

NECA advocates that the ACT government focusses on both the corporate entity as well as the office bearers in order to identify and address those engaged in phoenix activities.

More effort needs to be made to regularise information flows between industry participants and the regulators.

Confidential tip-off lines, or equivalent measures, should be developed.

ACT agencies should liaise with entities as the Phoenix Taskforce, the Inter-Agency Phoenix Forum and the Phoenix Watchlist as appropriate.

Summary

Builders and building surveyors licensing

Harmonisation of licensing across States and Territories

1) NECA advocates that the ACT Government gives consideration to the increased harmonisation and mutual recognition of electrical licences across other jurisdictions. Initially, mutual recognition could bring the ACT into line with legislation adopted by the State Governments of Queensland, New South Wales and Victoria prior to a review of the licensing regime for builders and building-related occupations across other states and territories. However, this must not dilute safety standards and technical expertise. The ACT government could raise the issue of harmonisation and mutual recognition at appropriate fora, including COAG and the Building Ministers' Forum.

Qualifications required for new licence applicants

2) NECA supports reforms to the licensing of builders whereby mandatory qualifications for new applicants should be revised to only include qualifications recognised to include sufficient content in building or construction management.

Building experience

3) NECA supports the proposed measure that:

- New class A and B licenses be developed to exclude work on residential buildings for applicants who lack sufficient experience with those buildings; and
- Applicants could also be required to demonstrate experience across all critical stages of a project.

Stage inspection and on-site supervision

4) NECA advocates that the ACT Government:

- Considers the inclusion in any guidelines, developed for builders carrying out inspections, of a requirement to ensure that only conforming building products are used; and

- The proposed expanded and integrated inspection / audit program should include checks to ensure that only conforming building products are used.

Retention Trust Money Account legislation

5) NECA supports the introduction of mandatory retention trusts in order to provide protection to sub-contractors owed payments.

Threshold for retention trust scheme

6) NECA advocates that the threshold for the retention trust scheme should be set at \$1 million.

Administration of the retention trust scheme

7) NECA advocates that the retention trust scheme should be administered by the ACT government, with the interest earned by the investment of the funds held in trust could be used to recoup the costs of the scheme.

Automatic return of retention money to sub-contractors

8) NECA advocates that, at the end of the 12 months defect liability period, the head contractor should automatically return the money to the sub-contractor. This would free sub-contractors from having to make an application to have the retention returned.

Payment Withholding Requests

9) Payment Withholding Request legislation – that allows the Principal/Head Contractor to be more easily served with a claim for payment – should be adopted across all states and territory jurisdictions.

Security of payment

10) NECA strongly advocates that a maximum time period for payment of a progress claim be set at 30 days (as opposed to 30 business days) should be legislated.

Project bank accounts

11) NECA advocates that the ACT government considers the introduction of project bank accounts for government construction contracts in the ACT, in light of the results of the NSW trial, or alternatively conducts its own trial of PBAs.

Alternative dispute resolution

12) NECA advocates that the ACT government ensure that any alternative dispute resolution mechanisms established for residential building in the ACT:

- Are quick and cost-effective; and
- Should seek to expedite payments to sub-contractors so that they are disadvantaged as little as possible due to disputes between builders / head contractors and consumers.

Phoenix companies

13) NECA encourages the ACT government to focus on both the corporate entity as well as the office bearers in order to identify and address those engaged in phoenix activities.

14) More effort needs to be made to regularise information flows between industry participants and the regulators.

15) Confidential tip-off lines, or equivalent measures, should be developed.

16) ACT agencies should liaise with entities such as the Phoenix Taskforce, the Inter-Agency Phoenix Forum and the Phoenix Watchlist as appropriate.