Fraud costing construction industry $3b a year

Bill Hoffman | 28th Aug 2014 6:54 AM

CRIMINAL prosecution for fraud may be an option in dealing with those responsible for construction industry losses of up to $3.2 billion a year.

ASIC Commissioner Greg Tanzer said yesterday that although there was no definition of illegal phoenix activity that might give rise to a criminal prosecution, conduct relating to it such as asset stripping and breaches of directors' duties might be subject to prosecution.

Mr Tanzer said annual construction industry losses due to phoenixing amounted to up to $3.2 billion annually according to research compiled for the Fair Work Ombudsman by PricewaterhouseCoopers.

Phoenixing involves the transfer of assets of an indebted company into a new one as a means of avoiding creditor payments, tax and employee entitlements.

"We have found that the construction industry is a particular hotspot for phoenix company activity and this effects not just the employees in the construction industry who might be affected directly because their superannuation entitlements might not be paid, or their leave entitlements might not be paid, but also, critically, other contractors, subcontractors and sometimes head contractors that are affected by companies going out of business, doing so intentionally with the absolute deliberate intent of defrauding all of those creditors and employees," Mr Tanzer told the ABC's AM program.

"In some cases, company failures are nothing more than bad luck. But there are some people who deliberately walk away without any intention of meeting liabilities and establish a new company to conduct the same business. We are committed to weeding out these individuals."

The transport, cleaning and security industries were also attracting attention because of a disproportionately large number of company collapses.

Serious questions have been raised about the behaviour of the Walton construction group, which went bust in October last year leaving debts totalling more than $90 million.

Documents obtained by the Daily and published two weeks ago show that in just over a month, Walton Construction Queensland went from being in good financial health, solvent and with net assets of $9.7 million to being placed in administration with debts of $29 million to unsecured subcontract creditors. That happened after most of its assets were transferred to Peloton Builders, which was established by directors of the Mawson Group, Walton's business advisers.

Walton Construction Queensland failed to pay Coast subbies nearly $3 million owed on the Nambour Coles project for work done and materials supplied.

Earlier this year, ASIC successfully appealed to the Federal Court of Australia to remove the original Walton liquidator because of perceptions of bias relating to its commercial relationship with the Mawson Group, the business adviser that organised the transfer of Walton assets to entities its directors controlled.

The Walton Sub-Contractors' Alliance wants a full public examination under oath of all those with knowledge of Walton's management of its affairs in the lead-up to it being placed in administration on October 3 last year.