

The Honourable Scott Morrison MP
Prime Minister
Parliament House
Canberra ACT 2600

March 30, 2020

Dear Prime Minister,

RE: Immediate Action needed over severe impact of COVID-19 on SME subcontractors in the building and construction industry.

We don't want debt; we want effective security of payment to receive the money we are owed.

As representatives of SME trade subcontractors, the leading sector trade bodies that make up over 82 per cent of the building & construction industry in Australia, we are writing to you to highlight urgent action required to ensure the survival of SME subcontractors.

Even before COVID-19, the building and construction industry was on a financial knife-edge due to high rates of delayed payments to subcontractors and high levels of contractor insolvencies, resulting in over \$4 billion every year not being paid to SME subcontractors. We know that you are well aware of the "use and abuse" of SME subcontractors in the construction supply chain from commissioning the 'Murray' review in 2017 to recommend a fix for the payment issues that plague the industry.

The construction sector is a critical part of a functioning Australian economy, employing approximately 1.2 million people and responsible for 9 per cent of our GDP. Most businesses in the industry are either sole traders or small to medium family-run enterprises. It's also a vital growth multiplier, with every dollar spent on construction and infrastructure generating a total of \$360 billion in revenue. Our industry will play a crucial role in the recovery from the impact of coronavirus, and in the delivery of many government infrastructure priorities. With the survival of 82 per cent of the businesses that make up the industry under threat, the industry will not have the strength or resilience to provide the experienced people to rebuild the Australian economy.

We implore you to not repeat the mistakes of the Labor Government's Global Financial Crisis stimulus package, whereby big business was put first, while the SME and family-run subcontractors were like "lambs to the slaughter". You will recall that many tradies did not get paid for work they did on government stimulus package projects.

To date, property developers and large contractors who make up a very small percentage of the industry and are largely responsible for the payment problems in the industry have dominated the political discussion – unfortunately at the expense of the small businesses that are the backbone of the industry.

For decades, SME subcontractors have often been forced into onerous contracts with tier one contractors, many with weak balance sheets. It remains common for these tier one contractors to use delayed or non-payment to the supply chain as free working capital. This situation will be further magnified due to COVID-19. The existing tragedy of SMEs bearing the brunt of delays and liquidated damages will be magnified enormously.

Governments have been making promises to fix the payment issues in the industry for decades. Many independent, government-commissioned reviews (see reviewers' list below) have all recommended the urgent need for Cascading Statutory Trusts (CSTs) that protect payments for all levels in the contractual supply chain – from principals to subcontractors. However, governments continue to waste time implementing complex Project Bank Accounts (PBAs) that are designed to only protect government and large tier one contractors and are accompanied by mountains of paperwork and unnecessary cost.

The esteemed independent reviewers are listed below:

- Wayne Martin AC QC (1995)
- Royal Commissioner Terrance Cole AO RFD QC (2003)
- NSW Reviewer Bruce Collins QC (2012)
- Senate Economics Reference Committee recommendation (2015)
- Commonwealth Reviewer John Murray AM (2017)
- WA Reviewer John Fiocco LLM (2018)

This is now a battle for survival for SME subcontractors. COVID-19 is causing much of the construction sector to shutdown, a situation that will probably worsen. SME subcontracting businesses will be the hardest hit, because right now they do not have enough cash to continue funding tier one contractors with interest free loans, represented by the money that should have been paid to them for completed work, preventing subbies from meeting their family needs, meeting payments to suppliers and covering employee wages.

We understand the rationale to relax the insolvency laws, however construction has the highest rates of insolvency and illegal phoenixing of any industry in Australia. It is unfair, it is un-Australian to continue with laws that allow large contractors to use COVID-19 as an opportunity to further delay or not pay their supply chain. Dishonesty and fraud are already rife in the industry. The public is also affected. They pay a builder for work done by subcontractors, but the builder then becomes insolvent and disappears having not paid subcontractors for their work. The current situation will provide fertile ground for this reprehensible practice to further flourish.

Prime Minister – it's crucial for your government to provide SME subcontractors with security of payment

The path forward is well known. It is to urgently adopt the recommendations in the Murray report for security of payment reform and immediately implement his recommendation for CSTs. This initiative would be the greatest single action taken by government since Federation to create a secure working environment for contractors and subcontractors in the building and construction industry. And the time to act is now.

Our common aim must be to keep as many tradies afloat as possible. They must have assurances of payment for past work and future work. We believe you have an obligation as part of relaxing the insolvency laws to put in place protections for the public and subcontractors to make sure they get paid.

More debt is not the answer. Many of these SME businesses work on lean margins and do not have the capacity to take on more debt, nor do they have the ability to repay debt, given the payment problems in the industry.

To minimise the requirement for Government support, it is critical that the supply chain remains in place and keeps working as long as possible, which in turn will maintain readiness and help drive recovery efforts.

Australia's subcontractors can't continue with the current situation. Because of the low cost of entry into the sector, there are always new entrants, without the requisite experience, to replace those who have lost their home and often family, as a result of financial difficulties caused by non-payment. This adds immeasurably to a lower standard of construction work and the many subsequent problems. The industry needs financial stability and your leadership to provide that stability.

This week, we request your government to:

1. Release the report of the senior officers, requested by the Building Minister's Forum (BMF), on model legislation for the introduction of CSTs across the industry and convene an emergency meeting of the BMF to commit States to implement model CST legislation across Australia immediately.
2. Speed up government payments to tier 1 contractors. In relation to those who have not implemented or are unwilling to implement CSTs, your government should make payments directly to subcontractors via CSTs. We simply must avoid any disruption or delay to projects from payment delays to subcontractors, exacerbated by the fragile balance sheets of the large contractors. CSTs are the only model for going forward.
3. In this troubled time, legislation in relation to payments by government is not necessary. The decision to pay subcontractors via CSTs can and should be made unilaterally. Such action by your government will keep thousands of small businesses in the supply chain operating. These measures are crucial to ensure SME businesses remain operational and available to take on government projects.

As you predict, there will be a flood of insolvencies, and the construction industry will be the hardest hit. Without the CSTs promised by governments, people building homes will lose their money and subbies that do the work will not get paid. We already experienced this with the GFC stimulus.

You need to act on the above requests to keep the building and construction industry operating. Otherwise we fear many SME subcontractors will simply close their doors. Without security of payment what is the point? The public will avoid building new homes instead opting to buy established homes that do not have the builder insolvency risks.

Only Government action on this vital issue will ensure the survival of thousands of subcontractors in the building and construction industry and the viability of the industry as a whole.

We stand by to work with you and your Government to implement all the recommendations of the Murray Review, noting that the Murray recommendations relating to CSTs are consistent with the recommendations of the other government reviews.

Yours sincerely,

Louise Stewart

Louise Stewart, Previous Chair, Subcontractors WA, Australian Subcontractors Association, CEO ProjectPay, Construction Payment Advocate.

Co-signed by:

Paul Williams – Chair, Australian Subcontractors Association

Bob Gaussen – CEO, Adjudicate Today

Andrew Clarke – CEO, Master Plumbers Association SA

Larry Moore – Executive Director, National Electrical & Communications Association SA/NT

Amanda Dawes – CEO, Master Painters and Decorators Australia

Copied

John Murray AM

John Fiocco LLM

Wayne Martin AC QC

Bruce Collins QC

Commonwealth

Karen Andrews – Industry Minister

Michael McCormack – Infrastructure Minister

Western Australia

Mark McGowan – Premier

John Quigley – Minister for Commerce

South Australia

Steven Marshall – Premier

Stephen Knoll – Minister for Planning

New South Wales

Gladys Berejiklian – Premier

Kevin Anderson – Better Regulation and Innovation Minister

Queensland

Annastacia Palaszczuk - Premier

Mick De Brenni – Minister for Housing and Public Works

Victoria

Daniel Andrews – Premier

Richard Wynne – Minister for Planning

Northern Territory

Michael Gunner – Premier

Gordon Ramsey – Minister for Building and Construction

Tasmania

Eva Lawler – Minister for Infrastructure, Planning and Logistics

ACT

Gordon Ramsay – Minister for Building Quality Improvement

Other

Senator Rex Patrick

Senator Stirling Griff