

[REDACTED]

From: Carsten Prier [REDACTED]
Sent: Tuesday, 21 August 2018 4:51 PM
To: Security of Payment 2018
Cc: [REDACTED]
Subject: Securing payments in the Construction industry

Follow Up Flag: Follow up
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Questions for comment:

Do you support the proposal to establish deemed statutory trusts in the Act?

YES, however I am surprised that this has taken so long, and I will say this again and again to those who will listen; GET something going that has a Federal reach, WHY do we keep these things within our state(s)? Queensland has just made amendments to their payment act, imagine the money and time that could have been saved, had ALL states done this in a joint effort? I understand that there was a need for States and local legislation, once upon a time, when we had pigeons carrying messages back and forth, but today, there is NO reason why this industry, and others, cannot operate under a Federal umbrella, and save millions of dollars across all industries. WHY do we need to have a contractor license in NSW AND one in Queensland? Imagine the contractor who lives on the border? HE has to have two licenses, both allowing him to perform the same tasks. IT IS time for us to wake up and act as ONE country, ONE law.

Do you support the proposal to apply a cascading 'deemed' statutory trust model?

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Yes, that seems the only way each link in the chain is looked after.

Do you support the proposal to apply the requirement for 'deemed' trusts to construction contracts valued at \$1 million or more?

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NO – I can't see a reason why this could not be available from \$500,000 contracts, given that the Head Contractor MORE than likely will hold a much larger contract with their client, the developer!

What would be an appropriate alternative monetary threshold? \$500,000

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Do you support the proposal to limit the application of the requirement to the value of contracts between specific parties (rather than the value of the head contract)?

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Yes

Do you support the proposal that the requirement for a deemed trust should arise immediately when the contract Monies are received by the trustee?

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YES, definitely, as Retention monies are held from the very first progress claim, this should take effect immediately.

Do you support the proposal that responsibility for managing 'deemed' trust monies is placed on the trustee?

Yes, as long as the beneficiary will be allowed access to 'view' the account online at any time through the project, OR that the Head Contractor with each Payment Schedule sent to the sub-contractor attaches a validated document showing the funds as being available, BOTH for the progress claim amount due, AND the retention monies accruing.

Do you support the proposal to allow trust monies on multiple construction projects to be held in a consolidated trust account?

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No, I think these needs to separated in to ONE account for each beneficiary or this will be too difficult to reconcile for the sub-contractors.

Should there be any further obligations applied to trustees and/or beneficiaries to support the efficient flow of monies in/out of accounts (for example, a requirement for transaction certificates of some form)?

A simple transaction record should be sufficient methinks, at the end of day, with all business relationships there needs to be a level of trust. IF someone wishes to commit fraud, they will find a way. As long as common law prevails. There should be ONE account for each project a Head Contractor has on the go.

Do you support the proposal to not require auditing of trust records?

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YES, not necessary.

Do you consider that the compliance and enforcement powers proposed in the exposure draft Bill are sufficient to support the operation of 'deemed' statutory trusts?

Yes, it is important to keep it as simple as possible, in order to avoid a whole NEW industry developing in the finance world, JUST to ensure compliance with this new Bill.

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Do you support the proposal to allow the trustee to withdraw funds from the account before a subcontractor has been paid?

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Yes, so long as the sub-contractor can view/check and have comfort in there being enough funds to cover their own progress claim and retention

Do you support the proposal to allow funds to be distributed on a pro rata basis as a proportion of their payment claims?

Yes, that is a scenario most like what would happen today, without this reform.

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Do you support the proposal to allow the investment of 'deemed' statutory trust monies?

I agree that the funds should be invested, perhaps in a pre-arranged form, e.g. Government Bonds, and that ALL proceeds from invested retention funds should be shared equally between the head contractor and the beneficiary.

Are any further provisions necessary to support the operation of this proposal?






SPEED ! This is long overdue. Do you support the proposal to allow the beneficiaries to inspect the records of 'deemed' trust accounts?

Do you support the proposal to apply executive liability to directors and other relevant persons for breaches?


Yes, the Directors are the ultimate people who make decisions and the only ones to be held liable, nothing new here.

Kind regards
Carsten Prien

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