



19 September 2018

Department of Finance, Services and Innovation
Regulatory Policy Branch
Locked Bag 2906
LISAROW NSW 2252

NSW Business Chamber Limited

140 Arthur Street
North Sydney NSW 2060

Postal address
Locked Bag 938
North Sydney NSW 2059

DX 10541 North Sydney

t 13 26 96

f 1300 655 277

e businesshotline@nswbc.com.au

By email: securityofpayment2018@finance.nsw.gov.au

SECURITY OF PAYMENT: CONSULTATION PAPER

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide comments on the *Securing payments in the building and construction industry – a proposal for 'deemed' statutory trusts* consultation paper (the consultation paper).

The Chamber is one of Australia's largest business support groups, with a direct membership of 20,000 businesses and providing services to over 30,000 businesses each year.

The Chamber supports the Government's objective to better secure payments in the building and construction industry from misuse and insolvency. To this end, the Chamber supports measures that provide robust protections to subcontractors which at the same time minimise complexity and compliance costs.

The Chamber estimates that NSW businesses encounter \$10.6 billion in annual compliance costs every year. This is why the Chamber advocates for robust and comprehensive assessments of any and all new regulatory proposals which give rise to new or additional regulatory burden.

While noting proposals and suggestions in the consultation paper, the Chamber considers there is a need for additional evidence and consideration to assess how a system of 'deemed' statutory trusts will precisely impact on construction businesses. We note other industry stakeholders have previously raised specific concerns that are yet to be adequately addressed. The Chamber recommends further consultation with business stakeholders be undertaken, including key construction industry associations to ensure policy settings are calibrated to minimise unnecessary costs and achieve desired outcomes.

The proposal for 'deemed' statutory trusts is intended to address a narrow subset of issues pertaining to the protection of subcontractors in the event that a head contractor becomes insolvent. For this reason, we consider it essential to consider the merits and extent to which 'deemed' statutory trusts can mitigate insolvency risks.

The essential question is whether policy interventions such as 'deemed' statutory trusts can reduce the incidence of insolvency, rather than a mechanism to elevate subcontractor interests ahead of other creditors in a liquidation.

The Chamber maintains the focus of an assessment of benefits associated with 'deemed' statutory trusts should be based on the effectiveness of proposed arrangements in reducing the incidence of 'head contractor' insolvency.

While it is plausible that 'deemed' statutory trusts may reduce the incidence of business insolvency, this is not a guaranteed outcome.

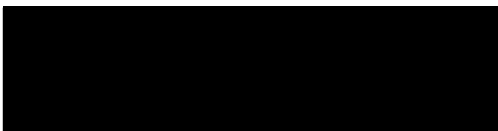
The Chamber considers any regulatory proposal should be accompanied with robust analysis, setting out the likely impacts on industry participants as well as a robust cost-benefit analysis. These points have been laboured in other submissions put forward by the Chamber and will not be repeated here.

In terms of alternate approaches, the Chamber would welcome further examination of whether a 'deemed' statutory trust approach would have prevented 'head contractor' insolvency in cases known to Government (rather than a narrow focus on subcontractor rights in the event of insolvency). Any vulnerabilities observed could be used to identify government construction projects and related activity for which to trial alternative models, including a 'deemed' statutory trust approach. This approach could focus on projects with a contract value exceeding \$5 million. Specific solutions might then be adopted as 'better practice' in government tendering and contracting. From this, associated lessons and broader regulatory approaches could be considered.

The consultation paper is a good first step toward this, though ongoing engagement will be needed to ensure proposals are refined to meet the needs of all stakeholders.

We look forward to further consultation on this important issue.

Yours faithfully



Chris Lamont
Director Policy & Advocacy