

18/09/2018 SUBMISSION

Response to the consultation paper:

Securing payments in the building and construction industry – a proposal for ‘deemed’ statutory trusts.

Att: NSW Department of Finance, Services and Innovation.

My name is Joanne Franklin and I am a surviving example of the impetus for this consultation paper, one of many hundreds of families affected by the lack of payment security within the Civil Construction Industry. My family and I suffered 12 months of financial hardship due to insufficient governance on the Woolgoolga to Ballina section of the Pacific Highway Upgrade - specifically Wave 5A.

Our Company was fortunate enough to receive a Financial Assistance Package from the NSW Government in relation to the Ostwald Brothers Pty Ltd collapse into Voluntary Administration and currently, Liquidation. I also continue to participate as a Committee Member for the Liquidators COI.

I am very pleased that action has been taken to rectify and ‘clean up’ many of the destructive practices used within the Industry. However, I have grave concerns that this incentive towards change will not prevent the ‘Wave 5’ type scenario occurring again.

Before I begin, I would like to acknowledge that I have spoken on public radio in response to Minister Matt Kean’s interview on the ABC North Coast (17/08/18), highlighting my concerns.

I have also contacted the below people requesting an extension of time for submissions. I sincerely believe from my research and consultation that the allowed time of 1 month (14th August – 19th September 2018) to seek a response to a paper that will directly affect hundreds of Subcontractors across an \$87 Billion-dollar Infrastructure pipeline is grossly inadequate. Especially when many work 50+ hour-weeks to get these projects/contract done. I also suggested that proper facilitation should be conducted, to bring greater awareness to the consultation paper and to collect important information across the Industry and from each level of engagement.

I believe this proposal presents an incredible opportunity to create real change within the Industry and missing out on the voices of so many effected, those at the coal face, will not serve the cause. Imagine if a ‘Wave 5’ scenario was to occur again because significant information was not collected. It would be devastating to our progress as an Industry and to all who put time, money and effort into securing the Industry, this includes the State and Federal Government, its agencies and the Australian Tax Payer.

I have contacted:

Christopher Gulaptis MP (Member for Clarence) who organised for Richard Hodge (Minister Kean’s Office) to call me, he did, and in detail I discussed my concerns.

I have sent messages to the NSW Office of Small Business and NSW Deputy Premier John Barilaro.

I have also spoken to other Political Party members, to open up further dialogue.

I would now like to highlight the following points of concern regarding the proposed ‘deemed’ statutory trusts:

From consultation paper:

What particular projects/contracts would require 'deemed' statutory trusts? They could apply to all construction projects of \$1 Million or more.

What about protections for business working below the \$1 Million starting point? Many small businesses work on projects/contracts below this threshold, how will they be protected? Why are they not considered important in this proposal? Small businesses seem to be the most convenient to burn off, yet they are one of the greatest assets. Every subcontractor along the supply chain should be protected - especially on Government projects.

Who would be responsible for managing the 'deemed' statutory trust? The management would belong to the participants in the construction project.

In this I am understanding that a Principal Contractor could therefore be the trustee? This is exactly how it operates currently, where the Principal/Head Contractor holds the power to pay when and how they see fit. Yes, the trust umbrella would make it more difficult to conduct unfair or illegal activity but as subcontractors we are once again powerless. One of the greatest threats to continuity of work for us is speaking out about those who contract us, all the way up the supply chain. The power to protect ourselves will once again be compromised, and for some outside of their control.

The trust should not be managed by any participating company within the contractual chain, it should be managed by an independent government agency. On a Government Project is it not the responsibility of the Government to ensure Tax Payers money is spent responsibly?

Additionally, in the proposal it states that **there is no requirement for a separate trust bank account and the trust account records will not be subject to any requirements for external auditing.** Where is the governance? Will it be put back into the hands of those who presently have it?

For unsecured creditors subcontracted to the trustee, these suggested proposals will be pointless and/or painful if there was a problem with payment claims.

When is the trustee entitled to payment? And what happens if there are not enough funds in the trust account?

In summary what is proposed is that there is no constraint for the trustee to withdraw money from the trust for its own use, from their own trust bank account, without any overseeing of this activity by an outside party? Is this also before subcontractor payment claims are approved? I fail to see how the proposed trust in this instance protects the subcontractor down the supply chain?

Why and how would there ever not be enough funds in the trust account (for work authorised) and why is it the responsibility of the beneficiary to ensure they are paid for work completed?

Can 'deemed' statutory trust monies be invested?

One of the concerns about trust bank accounts is the cost of administration. Perhaps some of the interest earned could contribute to paying for this.

In conclusion, I think there are many positive proposals within the consultation paper, I also think the trust concept would be a step in the right direction, but if contractors and small businesses continue to be left unprotected due to the points I raise, it will continue to fuel the exponential rise in insolvencies across this country. I feel it is imperative to open this discussion up even further. Thoroughly informed change has the potential to advance the Construction Industry in a positive way, a way in which has not been done before.

We should not miss this opportunity.

Sincerely,

Jo Franklin – Franklin Group Pty Ltd