**SECURITY OF PAYMENT STATUTORY TRUST CONSULTATION**

This survey is intended to gather data and information that will be considered by HoustonKemp when finalising the Financial Impact Analysis report commissioned by the NSW Government. It is not compulsory to answer all the questions, therefore, if you cannot provide relevant data, please skip to the next question.
Please read the HoustonKemp Report prior to commencing the survey.
The responses to this survey will remain anonymous, unless you provide the following details below

1. **Name**
2. **Job Title**
3. **Email**
4. **How would you describe your employment status?**

|  |  |
| --- | --- |
| [ ]  | Full-time |
| [ ]  | Part-time |
| [ ]  | Contract employee |
| [ ]  | Self-employed |
| [ ]  | Unemployed |

1. **Which of the following options best describes your annual turnover?**

|  |  |
| --- | --- |
| [ ]  | Between $0 and $50,000 |
| [ ]  | Between $50,000 to less than $200,000 |
| [ ]  | Between $200,000 to less than $2,000,000 |
| [ ]  | Between $2,000,000 to less than $5,000,000 |
| [ ]  | Between $5, 000,000 to less than $10,000,000 |
| [ ]  | More than $10,000,000 |

1. **Where does your business primarily carry out work?**

|  |  |
| --- | --- |
| [ ]  | New South Wales |
| [ ]  | Queensland |
| [ ]  | Western Australia |
| [ ]  | Victoria |
| [ ]  | South Australia |
| [ ]  | Tasmania |
| [ ]  | Northern Territory |
| [ ]  | Nationwide |

**CONTRACTUAL ARRANGEMENTS**

Section 2 of the draft report provides an overview of the building and construction industry in NSW. The section contained a summary of the relationships in the industry, involving a head contractor with multiple layers of smaller specialist sub-contractors underneath. This system allows small businesses to participate on larger projects, where they may not have otherwise had the opportunity. Larger businesses also benefit from this system by reduced overheads and regulatory responsibility. However, it can pose a risk if one business becomes insolvent along the contracting chain and accounts to those businesses contracted below them remain unpaid.

HoustonKemp would like to understand what is it about the current structure of contracting that makes it so attractive to businesses in the industry, both from a small and large business perspective.

1. **Why do businesses enter into sub-contracting arrangements?**
2. Do you use standard contract payment terms or are they generally amended?
3. **If you use standard contracts payment terms, which contract do you use?**
4. **If you generally use amended payment terms in standard contracts, what are typical amendments? For example, do they specify the process or conditions for claiming payments?**

**ADMINISTRATION TASKS**

The draft report assumes the number of hours a business may need to spend each week performing administrative tasks in general as well as the additional amount needed to perform tasks relating to statutory trusts.

For example, a business with a turnover of less than $50,000 is presumed to need between 26-56 extra bookkeeping hours per year to maintain a trust account.

On the other end of the scale, a business with a turnover of $5 - $10 million is anticipated to need an extra 6-42 hours per year.

To ensure that these costs are properly assessed, further information is needed to understand how many payments are likely to be processed in any given month. The length of the contracting chain also needs to be fully understood so that the cascading administrative assessment can be made.

1. **How many sub-contractors are retained on a typical project? Does this vary by project size or value? If so, how?**
2. **What is the typical depth of subcontracting chains (i.e. the number of contractual arrangements between the head contractor and business undertaking the work)? Does this vary by project size and value? If so, how?**

**THE DIRECT COST OF ACCOUNTING AND BOOKKEEPING TASKS**

The draft report noted the Murray Review finding that the administrative burden would not be onerous, but also recognised that bookkeeping tasks related to maintaining trust accounts are not trivial. To ensure that the administrative burden of statutory trusts is adequately assessed, accounting and bookkeeping costs need to be accurately quantified.

The draft report relied on identifiable industry information; however, the Government recognises that competition can influence the true price of these services to the industry. There are existing industries such as the legal and real estate industries that have firsthand experience in administering statutory trust accounts. These stakeholders may be able to provide a reference point for the likely impact of bookkeeping and accounting costs associated with maintaining these accounts.

1. **What may be reasonable bookkeeping and accounting costs for establishing and maintaining a trust account? Where possible, please detail one-off and ongoing costs separately.**
2. **Do bookkeeping and accounting costs for maintaining a trust account vary with business turnover? If so, how do costs change with a business turnover?**
3. **Are additional bookkeeping and accounting costs expected to be significant if a construction business is already required to maintain trust accounts for retention payments? Why or why not?**
4. The report uses two sets of assumptions to estimate incremental bookkeeping hours. The first set assumes smaller businesses will need to perform more bookkeeping hours, while larger businesses would have little to no impact. The second set adopts the opinion of the Murray Review which is that the administrative burden is unlikely to be onerous. Which set of assumptions do you think is accurate (explain why or provide examples)?

**BANKING COSTS**

Another cost the draft report accounts for is the amount to open and maintain a bank account. This information is publicly available, however for completeness, companies who currently run trust accounts are invited to provide information about their experiences about the costs of opening and running these accounts.

1. **The report notes that fees to establish a dedicated standard Australian business transaction bank account to fulfil the trust obligation are typically $120 a year based on the costs of accounts provided by ANZ, Commonwealth, NAB and Westpac. Do you agree? If not, please provide information about your experience.**

**THE LEGAL COSTS INVOLVED IN SETTING UP TRUST ACCOUNTS**

The draft report made two assumptions about legal costs; that businesses will either already have a trust account due to retention money obligations or they will have new obligations and therefore will need legal advice about the obligations and responsibilities of trust accounts. Therefore, the costs assumed in the draft report are one-off, but only for a proportion of businesses, depending on turnover. The assumptions made in the report are that there will be a one-off legal cost of $1,200.

1. **What are the reasonable legal costs for establishing and maintaining a trust account? Where possible, please provide ongoing and one-off costs separately.**
2. **Do the legal costs to establish and maintain a trust account vary with business turnover? If so, how do costs change with business turnover?**

**AUDITING COSTS**

Although not specifically factored into the modelling as a cost of the proposal, auditing has been mentioned in the draft report as one way to achieve regulatory compliance with a statutory cost obligation. The draft report indicates that the cost of an annual audit would be estimated to range between $3,000 and $10,000 per year depending on the complexity of the trust account.

1. **Is the estimate range between $3,000 and $10,000 per year accurate? If not, what is your experience of annual auditing costs?**

**RELATIONSHIP OF BUSINESS TURNOVER TO CONTRACT SIZE**

There was a lack of publicly available data to model the financial impact of the proposal according to project or contract size. To overcome this, HoustonKemp used business turnover as an indication of business size. The rationale for this was that businesses would most likely operate within contracts that were proportionate to their size (turnover) and do so consistently.

For example, information could be supplied indicating the number and value of contracts entered into over the last 5 years.

1. **What percentage of work for a construction business is typically contracted directly from principles as opposed to other contractors? Does this vary with business size or turnover? If so, how?**
2. **Can you provide information about what size contracts you enter into relative to turnover? Is this relatively stable?**
3. **Are you aware of the total project size when you enter into a large construction contract?**

**AVOIDED FINANCE COSTS**

The draft report recognised there is potential for financing costs to shift with the introduction of statutory trusts. Currently, the requirement for financed working capital is shared among head contractors and sub-contractors along the contracting chain. However, as noted in the Murray Review, late payments or insolvencies can have the greatest impact at the bottom of the chain. The draft report found that the cost of financing would most likely be shifted to the higher end of the contracting chain, where it is assumed that financing costs are more favourable.
Also, as predicted by the Senate Committee inquiry report into insolvency, the draft report indicated a reduction in costs for smaller businesses who may currently utilise short-term financing to capitalise projects. The cost saving for smaller businesses is expected to occur when they have access to their own funds as working capital.

1. **What percentage of a construction business’ turnover is sub-contracted out to other construction businesses? Does this vary with business turnover? If so, how?**
2. **What is the typical payment arrangement for construction contractors? How often are payments settled late?**
3. **Of the payments that are settled late, by how many days are you typically paid late? What are typical reasons for late payments?**
4. **The report relies on data from the Reserve Bank of Australia to inform financial costs. Is there alternative data available that can be considered?**

**APPLICATION OF A THRESHOLD TO EXCLUDE CERTAIN CONTRACTS**

The Murray Report recommended statutory trusts apply to all construction projects valued at over $1 million, supporting the recommendation in the NSW Collins review. However, in the 2018 consultation, it was noted that this threshold may be too high and the benefits of a statutory trust may not be experienced where it was needed. As a result, HoustonKemp were asked to consider the financial implications of a zero threshold and then test the implications while incrementally increasing that threshold. As a result, HoustonKemp concluded that at about $200,000, the benefits began to outweigh the costs of administering a statutory trust obligation.

1. **Do you regularly enter into contracts valued at around $200,000?**
2. **If so, do you engage sub-contractors to perform work for you?**
3. **What types of work do the sub-contractors perform for you?**

**HOME BUILDING SECTOR**

HoustonKemp noted that the application of a $200,000 threshold would also likely create a consequential effect of excluding most of the home building sector. This was based on the assumption that most home building contracts would most likely be valued at under $200,000.

1. **The report notes ABS statistics for residential building work suggests that most projects are relatively small. Does this data accurately reflect market reality for the purposes of compromising threshold models? If not, please provide an explanation, and/or relevant data.**
2. **The report considers that a contract threshold of $200,000 would exclude most residential construction contracts. What contracts would exceed a $200,000 threshold?**

**TRANSITIONAL ARRANGEMENTS**

HoustonKemp were asked to provide transitional arrangement options should a statutory trust obligation be introduced.

1. **The report lists principles relevant to considering transitional arrangements, i.e. adequate time to prepare for compliance with changes, different stakeholders will need different timeframes to prepare and a trial of the proposal to a small group first. Please note any other principles that haven’t been captured and need to be considered**
2. **The report lists a set of activities that will need to be undertaken to prepare to comply with the statutory trust obligation. Please note any other activities that haven’t been captured and need to be considered.**
3. **The report concludes that a period of 6-12 months is considered a reasonable lead time to undertake the set of activities listed. Do you support this conclusion? Please provide an explanation of why/why not.**
4. **The report suggests staging implementation of the statutory trust obligation based on business turnover/contract value to allow for small and medium businesses to be given a longer preparation time. Do you agree that this is reasonable based on the information available? Please explain why/why not.**
5. **The report suggests a 12-month review period is considered a reasonable time frame between stages if a staged implementation was to be adopted. Do you support this suggestion? Please explain why/why not.**
6. **The report concludes that businesses with a turnover of $5 million are well equipped to quickly implement systems and processes to comply with the trust obligations. Do you agree? Please explain why/why not.**