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# Security of Payment Statement of Agreement

Australian building and construction joint industry  
submission to the Commonwealth Government

16 August 2022



# Statement of Agreement

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**Australia's building and construction industry representatives at the Security of Payment Industry Forum jointly and collaboratively agreed that the following actions must be taken by the Federal Government as a matter of priority.**

**Strong economic recovery and prosperity, and the growth of local economies, hinge on critical sectors like building and construction, and we ask the Commonwealth Government to actively and genuinely engage with industry in implementing these actions.**

## **ACTION 1**

**Urgently enact federal Security of Payment laws to implement the Murray Report**

- Remove the confusion and inconsistency between current laws by enacting a single framework for security of payment that will apply consistency across Australia.
- Within **3 months**, prepare the draft legislation for consultation with industry and other stakeholders.
- Ensure that the draft legislation reflects the recommendations in the Murray Report including provision for cascading statutory trusts in favour of sub-contractors and sub-sub-contractors.

## **ACTION 2**

**Strengthen prohibitions for unfair contract terms**

- The use of unfair contract terms in construction subcontracts is strongly linked to security of payment issues and greater protections against unfair contracting are urgently required.
- In addition to immediately implementing the recommendations stated in the Murray Report in relation to unfair contract provisions, the federal government must urgently progress the enhancement of business to business unfair contract laws under the Australian Consumer Laws (ACL). However, these enhancements must go further for the construction industry.
- The federal government must also prohibit the use of specified types of unfair contract terms which have become common in the construction industry to make it clear that the use of such terms will not be tolerated.

## **ACTION 3**

**Ensure the government procurement practices support fair contracting down the construction supply contractual chain**

- Procurement policy and procedure for government construction projects must be reviewed and enhanced to proactively require head contractors to strictly comply with security of payment and unfair contract laws.
- Government must take steps to ensure that the content of head contracts is not contributing to unfair payment practices down the sub-contracting supply chain.

# Security of Payment

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**The lack of national payment protection laws is hurting the building and construction sector, which employs approximately 1.2 million Australians.**

**Cash flow is the lifeblood of the construction industry and Australian subcontractors are in crisis and the Commonwealth Government has an obligation to act.**

## **Government pre-election commitment**

Industry is calling on the Albanese Government to deliver on their pre-election commitment to implement their policy on Security of Payment, which states:

*“Labor is committed to protecting the rights for small business, including ensuring security of payment in the building and construction industry.*

*The recommendations in [Review of Security of Payment Laws: Building Trust and Harmony](#), prepared by John Murray in 2017, including in relation to the implementation of statutory trusts, must be implemented **immediately.**”*

One of the key recommendations of the Murray Report was for there to be harmonised Security of Payment Laws.

Despite the state and territory Building Ministers agreeing in August 2018 to work collaboratively to improve consistency and in February 2019 to develop model legislation for deemed statutory trusts, **nothing has been done.**

In fact, the piecemeal adoption of the Murray recommendations by some states has led to greater inconsistencies between the jurisdiction’s laws and seven of the eight jurisdictions have failed to introduce deemed statutory trusts.

**It is time for the Federal Government to take decisive and urgent action to implement the Murray report through federal legislation.**

This is essential to regain business confidence in the sector, support small and medium businesses, protect existing and create new jobs, protect employee entitlements and attract skilled workforces.

**The Government must honour its commitment and immediately implement Security of Payment reforms as outlined in the Murray Report, and put a stop to insolvencies, job losses and economic hardship for thousands of Australia’s small and medium businesses and their families.**

# Industry unites for subcontractors

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## National Security of Payment Industry Forum

The National Electrical and Communications Association (NECA) called for industry associations from across the country to gather for the **Security of Payment Industry Forum on Tuesday 9 August 2022**, and jointly agree on urgent actions the Commonwealth Government must take to legislate payment protections.

Recent collapses of many builders across the country reflect conditions facing the industry that are leading to unprecedented risk of financial stress, insolvencies, job losses and reputational damage. Such pressures often go beyond the material impacts and affect the wellbeing of business owners, their employees, and their families. **It is morally unacceptable that subcontractors not receive payment for the work they carry out.**

Whilst Security of Payment laws have been enacted by jurisdictions, they remain inconsistent and inadequate in protecting the rights of subcontractors. Further, unfair payment practices are exacerbated by a culture of imposing unfair contract terms on subcontractors.

**Subcontractors should not become unwilling bankers for interest-free loans for builders.** More must be done to shift this culture through laws that protect subcontractors and enable the construction industry to deliver on the economic benefits that are essential to the prosperity of Australia.

**Mr John Murray AM** attended the forum and provided an overview of Australia's Security of Payment regimes. Mr Murray is the author of the [Review of Security of Payment Laws, Building Trust and Harmony Report](#), as commissioned by the Federal Government.

A member of the Order of Australia for services to the building industry, Mr Murray is an experienced adjudicator who has made over 500 adjudication determinations, the former CEO of Master Builders Australia, Director of Cbus and Cbus Property, Standards Australia and the inaugural Chair of the NSW Building and Professionals Board.

The Security of Payment Forum was facilitated by **Ms Bronwyn Weir**, an accomplished regulatory lawyer who works with all levels of government. Ms Weir co-authored the [Building Confidence Report](#), at the request of the then national Building Minister's Forum.

Following **industry representatives** participated in the Security of Payment Industry Forum and the development of this submission and Statement of Agreement:

- Master Plumbers Australia New Zealand
- Master Electricians Australia
- National Fire Industry Association Australia
- Electrical Trades Union
- Refrigeration and Airconditioning Contractors Association
- National Electrical and Communications Association
- Specialist Contractors Association
- Airconditioning and Mechanical Contractors Association
- Out of session input was also received from the Subcontractors Alliance.

Representatives from the Australian Small Business and Family Enterprise Ombudsman also attended the Forum to hear about Security of Payment priorities and proposed reforms from industry associations firsthand.

# Contact us

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For more information on the Security of Payment Industry Forum and this Statement of Agreement on behalf of all forum participants please contact:

Mr Oliver Judd  
Chief Executive Officer  
National Electrical and Communications Association  
Phone: 0400 134 569  
Email: [Oliver.Judd@neca.asn.au](mailto:Oliver.Judd@neca.asn.au)

## **Participating industry representatives:**

- National Electrical and Communications Association - [www.neca.asn.au](http://www.neca.asn.au)
  - Master Plumbers Australia New Zealand - [www.masterplumbersanz.com](http://www.masterplumbersanz.com)
  - Master Electricians Australia - [www.masterelectricians.com.au](http://www.masterelectricians.com.au)
  - National Fire Industry Association Australia - [www.nfia.com.au](http://www.nfia.com.au)
  - Electrical Trades Union - [www.etunational.asn.au](http://www.etunational.asn.au)
  - Refrigeration and Airconditioning Contractors Association - [www.racca.asn.au](http://www.racca.asn.au)
  - Specialist Contractors Association - [www.specialistcontractorssa.com.au](http://www.specialistcontractorssa.com.au)
  - Airconditioning and Mechanical Contractors Association - [www.amca.com.au](http://www.amca.com.au)
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