



Australian
**Small Business and
Family Enterprise**
Ombudsman

MEDIA STATEMENT

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Deemed statutory trusts feasible for construction industry projects

A working paper on cascading deemed statutory trusts in the construction sector, released today by the Australian Small Business and Family Enterprise Ombudsman, has determined the trusts are feasible, with the benefits outweighing the potential costs and impacts on working capital.

“We have researched and analysed the costs of establishing cascading deemed statutory trusts and recommend these for commercial projects with a value of at least \$1 million,” Ombudsman Kate Carnell said.

“Imposing statutory trusts on very small businesses is not warranted, so we recommend setting a floor value between \$100,000 and \$200,000 to exclude low value subcontracts within a project.”

In 2016, the Murray Review recommended introducing deemed statutory trusts as a way to protect payments to subcontractors in the event of an insolvency.

“This is where money payable to subcontractors in the construction supply chain is quarantined in a separate statutory trust account, to pay for work and materials supplied to a project,” Ms Carnell said.

“We have seen a marked increase in Australian construction industry insolvencies in the past few years and small business subcontractors are the hardest hit when this happens,” Ms Carnell said.

“Just last month engineering company RCR Tomlinson went into administration owing millions to unsecured trade creditors.

“Subcontractors perform more than 80% of all work in the Australian construction industry and small businesses with less than five employees make up 64% of all construction sector insolvencies.

“We’ve done the sums and found additional administration costs for each of the SMEs is acceptable.

“For companies with more than five employees, the cost will be less than 1% of their annual revenue and for companies with 20 employees, the cost is only 0.1%.

“As a first step we would like to see the federal government introduce cascading deemed statutory trusts in all its construction projects.

“This would go a long way to protecting subcontractors in the event of insolvency and speed up payment times, removing the temptation by mid-tier operators to use subcontractor’s progress payments as their own.”

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