

30 March 2016

Security of Payment discussion paper  
GPO Box 2457  
Brisbane QLD 4001

Sent via email to: [securityofpayment@hpw.qld.gov.au](mailto:securityofpayment@hpw.qld.gov.au)

Dear Sir/Madam,

Master Electricians Australia (MEA) appreciates the opportunity to respond to the *Security of Payment* Discussion Paper released by the Department of Housing and Public Works in December 2015.

Please see below Master Electricians Australia's (MEA) responses to some of the questions posed in the discussion paper:

**1. *Would you support a project bank account trial on government projects? Why?***

A Project Bank Account Scheme would be a welcome reform for subcontractors working on government building projects in Queensland. Such a scheme would provide the much needed protection to subcontractors to ensure prompt payment for the work they have performed.

MEA has argued for a similar scheme in Queensland for several years. A problem commonly encountered by electrical subcontractors involves a head contractor holding retention monies until they are satisfied that the work on a project has been completed. The subcontractor is then put in the difficult position of being subject to the principal contractor's opinion on the quality of the electrical work they have performed. In the meantime, the retention monies held are accumulating interest for the principal contractor while the electrical contractor is left unpaid for the work they have performed.

Through our workplace relations and technical advice lines we regularly field enquiries from members seeking return of their retention moneys with some members having no choice but to write off debts, losing significant amounts of retention money.

A Project Bank Account Scheme would ensure that both retention monies and progress payments are protected in the event of a head contractor's insolvency. This would be a welcome reform for the electrical industry.

Further, in order for the PBA scheme to be effective, it is important that the extended payment terms currently included in many large contracts are removed. The Queensland Government can ensure that efficient payment of invoices is achieved by all Government Departments with standard payment terms of 28 days. Small Business relies on cash flow and currently members of our association are regularly faced with payment terms of up to 90 days. This is unacceptable for any business. The Federal Government has started to

address this issue with the Unfair Contract provisions being extended to Business to Business contracts, effective November 2016.

**2. Do you think the use of PBAs in the private sector is feasible in Queensland? Why?**

Yes. MEA would support the use of PBAs in the private sector. Just as subcontractors working on government projects are entitled to a security of payment system that supports their right to prompt payment, so too are those operating in the private sector. The experience in Europe indicates there may be many advantages with the use of PBAs in the private sector. These include:

- Greater certainty over payment timing and amounts will appeal to clients and strength the building and construction industry.
- Minimal set-up costs will reduce administration and speed up payment. The resultant shifts in project behaviours will likely appeal to the private sector.
- A secure chain of payment will allow contractors to focus on the project at hand without worrying about their bottom line.
- An established system of payment achieved through PBAs will remove some of the tensions experienced between head contractors and sub contractors on a site. This will in turn facilitate partnering and collaborative working.
- Analysis of past projects suggests that up to 2.5 per cent efficiency savings are achievable based on research by Faithful Gould in Europe.

(From: <https://www.fgould.com/uk-europe/articles/will-private-sector-run-project-bank-accounts/>)

We propose that the scheme be administered by the state government with the added establishment and administration costs covered by the interest earned on the funds held in the PBAs.

**3. Do you think that the use of PBAs in the private sector would improve security of payment? Why?**

Yes. As detailed in the discussion paper, PBA would provide greater certainty of payment for subcontractors and protect against head contractor insolvency.

**4. Should there be a minimum amount necessary to use a PBA? If so, what value? Please specify?**

No. All subcontractors are entitled to the protection that such a scheme would provide. The value of a contract does not necessarily mean that all claims under the contract will be complex or for a large amount. Setting the contractual value could also be problematic.

**5. Would you support a RTFS? Why?**

Yes. As with PBAs, a RTFS will provide a secure mechanism for subcontractors to receive their rightful payment.

Introducing a Construction Retention Trust Scheme in Queensland would undoubtedly involve establishment costs. However, it would also create a more equitable balance between the interests of principal contractors and the subcontractors engaged on a project who are lawfully entitled to payment for the work they have performed. This system would also continue to protect the rights of consumers by ensuring work is performed to a certain standard in order for funds to be released.

The New South Wales Government has taken action on this issue by introducing a retention trust scheme which is scheduled to commence this year. In NSW, the costs involved in administering the scheme are to be offset through lodgement fees for audit reports that will need to be prepared by head contractors. This may be an option the Queensland government could consider to cover the costs of administering a retention trust scheme.

**6. Should a minimum contract value be required before mandating the use of a RTFS? Why?**

No. Similarly to PDAs, all subcontractors are entitled to the protection that such a scheme would provide.

**7. How would this scheme be best administered, and by who? Please provide your reasons.**

We would support administration arrangements similar to those adopted in NSW with authorised deposit-taking institutions (ADIs) holding retention monies in dedicated accounts.

**8. Is this a viable option for industry? Why?**

Yes. The benefits to the whole contractual chain are numerous with potential for the additional set up costs to be countered as discussed above.

**9. Is a head contractor insurance scheme a viable option? Why?**

Possibly. However, the time to lodge claims and legal challenges to payouts are significant obstacles.

**10. Do you support a review of legislation including the Corporations Act 2001 (Cth) and the Bankruptcy Act 1966 (Cth)? Why?**

No comment.

**11. Do you see any major barriers to these changes operating effectively? Please provide your reasons.**

The only significant barrier would be a reluctance from some parties in the contractual chain to undertake the additional administrative tasks demanded of them. An education program would go a long way towards overcoming this obstacle.

**12. Do you think an education program is needed? Why? For what in particular?**

It is imperative that any changes to security of payment laws in Queensland be accompanied by a comprehensive education campaign. It is inevitable that the changes may create initial reluctance from the building and construction industry. However, as detailed in the discussion paper, evidence from other jurisdictions demonstrates that once industry becomes familiar with the PBA the system will run smoothly. An education campaign will be integral in this respect. Head contractors in particular will require targeted guidance on their new responsibilities (be that under PBAs or a RTFS). Ideally, government would work together with industry bodies to ensure the message is received and understood by those affected.

**13. Should the education program be voluntary or mandatory? Why?**

In order for the new system to run smoothly an education program must be mandatory. Every party in the chain of payment must be aware of their rights and responsibilities.

**14. Who do you think should take part in the education program? Why?**

As stated above, every party in the chain of payment should take part in the education program so the system runs smoothly.

**15. How do you think an education program should be implemented and by whom?**

MEA recommends that the Department of Housing and Public Works coordinate the education program. However, it is imperative that industry be directly involved in the development and implementation of such a program. While all participants need an understanding of what is involved in the entire payment process, each trade group will require targeted education on their specific responsibilities. For example, given that electrical contractors are most often the subcontractors on a project, an industry body or association would be better placed to inform electrical contractors on their rights and responsibilities.

An education program should entail the following:

- Industry information sessions held throughout Australia
- Targeted fact sheets available through the DHPW website
- A dedicated phone line

- Coordination with industry bodies to distribute information on the changes through their communication channels be that electronic, hard copy communications and their direct member contact channels.

**16. Do you think the 2014 amendments to the BCIP Act improved security of payment? Why?**

Feedback from our members indicates that the amendments to the *BCIP Act* have made a minimal impact on security of payment. This may be due in some part to contractors' lack of awareness on their rights under the *BCIP Act*. MEA recommends further education on the *BCIP Act* be undertaken through the Queensland Building and Construction Commission.

**17. Could the BCIP Act be improved? How?**

MEA recommends that the Queensland government follow NSW's lead and remove the requirement under s17(2)(c) of the *BCIP Act* that a payment claim must be made under the *BCIP Act*.

**18. Should the NTA reduction trigger remain at 30%? If no, what is a reasonable figure? Please provide your reasons.**

No comment

**19. Do you think the trigger event for reporting to the QBCC should continue to be defined by reference to a comparison of the licensee's NTA position from time to time with its last advised and QBCC accepted NTA position? Please provide your reasons.**

No comment

**20. Would some other comparison be more appropriate? What and why?**

No comment.

**21. Would you support a review of the effectiveness of prompt payment provisions in the QBCC Act? Why?**

No comment

**22. Would you support harsher penalties for late or missing payments to subcontractors? Please provide your reasons.**

No comment

**23. How do you think the Subcontractors' Charges Act 1974 is working?**

No comment

**24. What changes are necessary, if any, to the Subcontractors' Charges Act 1974?**

No comment

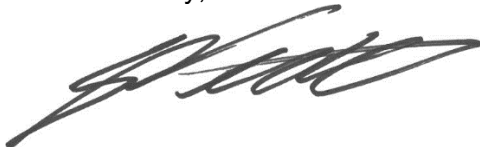
**25. Do you think we should consider other options? If so, what are these?**

No comment

**26. Do you have ideas about implementation of an option? If so, please provide relevant detail.**

I would welcome the opportunity to discuss any of these matters further with the department as the review progresses.

Yours faithfully,



Gary Veenstra  
State Manager - Queensland