Unfair Trading Practices Protections for Small Businesses

Federal

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MASTER ELECTRICIANS AUSTRALIA

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MASTER ELECTRICIANS AUSTRALIA

EXECUTIVE SUMMARY

Review into Unfair Trading Practices Protections for Small Business

Master Electricians Australia (MEA) is a peak industry association representing electrical contractors across Australia, majority of which are small and medium sized businesses and has been supporting Australia's electrical businesses since 1937. We are recognised by industry, government and the community as a leading business partner, knowledge source and advocate. You can visit our website at www.masterelectricians.com.au

MEA welcomes the opportunity to respond to the Government's consultation on extending unfair trading practices protections to small businesses.

SMALL BUSINESSES: THE BACKBONE OF AUSTRALIA

97.3% of all businesses in Australia

98.5% of Australia's 410,602 construction businesses employ fewer than 20 employees

91% are microbusinesses with fewer than 5 employees

Despite their vital role in the economy, many small businesses face power imbalances and limited resources when dealing with larger parties in the supply chain, including head contractors, suppliers and manufacturers. As a result, they are often left without practica recourse for rectification when unfair trading practices occur – whether in business-to-consumer or business-to-business relationships.

Small businesses deserve to be treated fairly and protected from being taken advantage of in the supply chain.

KEY RECOMMENDATIONS

1 BUSINESS-TO-CONSUMER

Extend s 28B general unfair trading protection to small businesses in business-to-consumer transactions

2 BUSINESS-TO-BUSINESS

Implement an economy-wide prohibition on unfair trading practices in business-to-business

3 COMPLEMENT, NOT REPLACE

Retain existing legislative frameworks as the primary regulatory regimes, with the new prohibition acting as complementary safety-net.

4 RECOGNISE SME BARRIERS

Continue acknowledging practical barriers, including power imbalances, limited resources and fear of commercial retaliation.

Strengthening unfair trading practice protections will improve confidence, promote fairness and integrity in the market, and support the growth and sustainability of small businesses across Australia.

Business-to-Consumer Relationship

Should the proposed general prohibition (s 28B) be extended to also protect small businesses where they acquire goods or services as a consumer? Please include examples or case studies of conduct that this extension could address including, where possible, evidence of its impact (including financial impact) on small businesses.

MEA supports extending the proposed general prohibition in s 28B to protect small businesses where they acquire goods or services in a consumer-like capacity.

Small businesses, particularly sole traders and microbusinesses, often engage with suppliers in circumstances comparable to household consumers and face many of the same vulnerabilities, including information asymmetries, limited bargaining power, and constrained resources. Unlike larger businesses, they rarely have dedicated procurement, legal, or administrative functions to assess complex terms, identify risks, challenge unfair conduct, or absorb the sunk costs of faulty goods or services.

The impact of unfair trading practices can extend beyond the immediate transaction. Where operational products or services (for example scheduling software, customer management systems, or essential equipment) malfunction or materially differ from what was represented, the consequences can include business interruption, delayed invoicing, lost billable hours, and cashflow disruption. In some cases, this may also result in reputational harm where customer service or project delivery is affected.

Small businesses may also incur replacement costs, staff downtime, project delays, and administrative burdens associated with rectification. For businesses operating on narrow margins, even modest losses can have disproportionate financial consequences.

Extending s 28B would appropriately reflect the realities of small business operations and provide important protections against conduct that distorts decision-making, obscures material information, or impedes access to remedies.

Should any adjustments be made to the proposed general prohibition when extending it to apply in respect of supply to small businesses? For example, should it:

- Only apply where there is a bargaining power imbalance between the supplier and the small business?
  While a "bargaining power" threshold could introduce complexity, uncertainty, and scope for dispute, it could also introduce fairness and reasonableness for business-to-consumer transactions. The drafting would require careful consideration to not disadvantage small businesses purchasing the goods and services. One option could be to introduce a threshold requiring that the providing or supplying business is not categorised as a small business, ensuring the measure is appropriately targeted at addressing genuine power imbalances between contracting parties.

- Only capture conduct that causes, or is likely to cause, financial detriment to the small business?
  Section 28B(2)(b) under the *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026*, captures both financial and non-financial detriment. MEA therefore does not support limiting the application of such provisions for small businesses to financial detriment alone, as non-financial harm can also materially impact business operations and profitability. For example, the additional stress and mental burden placed on business owners in resolving unfair trading issues can impair decision-making, reduce productivity, and divert attention from core business growth and operations. However, to protect supplying businesses from unreasonable complaints, a threshold should be developed in consultation with industry to define what reasonably constitutes non-financial detriment supported by guidance materials to small and large businesses.

  Not capture a supplier's conduct if the conduct is reasonably necessary to protect the supplier's legitimate interests?
  Further detail on this proposal would be needed. In principle, such an exclusion

may be appropriate in some circumstances, provided there is an objective evidentiary burden on the supplier to demonstrate the legitimacy and proportionality of the conduct.

- Other?

  In relation to the consultation's proposed list of goods and services to be included, MEA considers the second bullet point requires amendment, or alternatively the insertion of an additional bullet point, to capture goods and services acquired by small businesses for internal operational purposes.

  As currently drafted, the provision is limited to goods or services "ordinarily acquired for personal, domestic or household use or consumption". This excludes business purchases and narrows the scope of protections for small businesses where the monetary threshold exceeds $100,000. This may create ambiguity in coverage and reduce the effectiveness of protections for small businesses, while also increasing compliance complexity for suppliers operating across both consumer and small business contexts.

Would it be appropriate to use the same small business threshold as is currently used in the unfair contract terms provisions of the ACL (i.e., characterising a small business as one with fewer than 100 employees and/or less than $10 million annual turnover), or is another threshold appropriate?

MEA commends the Government for proposing a robust eligibility threshold for what would constitute a small business under s 28B. MEA supports the proposed threshold.

Noting that most franchisees in Australia would be captured as small businesses, are there similar issues that impact franchisees that are not small businesses when they acquire goods or services as a consumer? If so, would any such issues be best addressed through reform to the ACL, or through other regulatory frameworks such as the Franchising Code?

MEA notes that while many franchisees are formally part of larger corporate systems, a significant number operate with limited local operational support and resources, and in practice function in a manner closely comparable to small businesses. Accordingly, franchisees can face similar vulnerabilities to small businesses when acquiring goods or services in a consumer-like context, including information asymmetries, reliance on standard form contracts, and limited capacity to assess or challenge complex terms.

What would be the likely benefits to small businesses from extending the proposed general prohibition to small businesses? Would there be broader economic impacts from the extension? Where possible, please provide quantitative information or examples.

Extending the proposed protections to small businesses would assist in addressing the costs of unfair trading practices we identified in response to the first question. It would reduce unnecessary sunk costs associated with faulty or misrepresented goods and services, including time and expenditure involved in rectification, dispute resolution, and administrative processes.

In addition, it would reduce the operational burden on small business owners, who are already managing significant compliance and administrative demands with limited resources. Unfair trading practices add an unnecessary layer of cost, complexity, and stress to already constrained business operations.

At an economy-wide level, stronger protections are likely to improve confidence among small businesses when acquiring goods and services, supporting greater investment in operational tools, systems, and services. This increased confidence would support business growth and productivity, as small businesses (who comprise a significant share of the economy) are better able to invest, operate efficiently, and contribute to overall economic activity through improved commercial performance and spending.

Would there be any additional compliance costs for businesses if the proposed general prohibition was extended to protect small businesses, noting the Bill if passed would already require businesses to comply in respect of supply to consumers? Please provide quantitative information or examples where possible.

Big Businesses / Suppliers / Manufacturers (supplying parties)

There will likely be administrative, and potentially legal, costs for supplying parties associated with ensuring their practices comply with the obligations under s 28. However, given the intent of these provisions is to protect against unfair trading practices, we expect any impacts will primarily be borne by businesses whose practices do not meet the existing standards of what is reasonable and fair conduct and provides an opportunity to increase the overall integrity of trade.

Audit and Enforcement

Some increase in regulatory workload is likely for the ACCC, particularly through higher complaint volumes and the need to assess whether a transaction falls within scope, including whether a small business is acting in a consumer-like capacity. However, MEA considers this impact is likely to be contained in practice, as it builds on established Australian Consumer Law concepts and enforcement mechanisms rather than introducing a new regulatory framework.

While some additional interpretive work may arise in the early stages of implementation, this is an inherent feature of any extension of existing protections rather than a structural change in enforcement settings. Over time, guidance, precedent, and market familiarity are expected to reduce uncertainty and improve consistency in application.

MEA also notes that clearer and more consistent baseline protections may contribute to better upfront compliance by suppliers, reducing the incidence of disputes and enforcement action over the longer term. On balance, any increase in short-term regulatory activity is therefore likely to be offset by improved clarity and reduced friction in commercial dealings over time.

Business-to-Business

The vulnerability of small businesses remains consistent regardless of whether they are engaged in a business-to-consumer or business-to-business relationship when procuring goods or services from big businesses, suppliers or manufacturers.

MEA does not consider it reasonable to exclude goods or services acquired by small businesses for use in delivering goods or services to their customers (for example, products installed at a customer's premises – refer to Appendix A) from unfair trading practice protections simply because the purchaser is classified as a "business" rather than a "consumer". In both contexts, small businesses are exposed to similar vulnerabilities arising from power imbalances, which can be exploited by larger and more powerful market participants. Excluding business-to-business relationships from such protections would create an arbitrary distinction in the regulatory framework and may impede potential productivity benefits that could otherwise be realised.

What types of unfair trading practices are occurring in business-to-business dealings, and what harm does this cause small businesses? For each example:

Businesses Impacted and Types of Relationships

Small businesses frequently operate in environments characterised by significant bargaining power imbalances between subcontractors and larger head contractors, suppliers, and manufacturers.

A key feature across these relationships is small businesses' limited resources to enforce their rights to payment, rectification, or fair contract terms. In addition, small businesses often face a fear of retribution, including delisting, reduced work allocation, reputational harm, or loss of future contracting opportunities. This can deter them from raising disputes or enforcing their legal rights, even where entitlements/rights exist.

Common business-to-business relationships in which small businesses are frequently vulnerable to unfair trading practices include -

- *Head Contractors / Bigger Construction Companies*
  - *Pre-Contract Stage:* Issues arise at procurement and contract formation through the use of standard form contracts and unilateral terms that shift risk onto small businesses (although the disputes may not arise until a later point in time) through unfair contract terms which disproportionately shifts risk to small businesses (see Appendix B).

  - *Contract Performance Stage:* Issues arise during contract performance, including delayed or withheld payments (see Appendix C) and disputes over variations. (Note payment issues also arise at the end of the contract engagement).

  - *Prospective Relationship* - Small businesses sometimes refrain from asserting their rights due to concerns about reputational harm or loss of future work.

- *Suppliers / Manufacturers*
  - *Purchase of Goods or Services* - Small businesses may face changes to pricing, delivery requirements, or trading terms as well as a refusal to provide remedy for defective goods or services. Members have raised concerns about supplier retribution where reimbursements are sought, particularly affecting construction businesses in rural and remote areas with limited supplier options.

Harm that Small Businesses are Vulnerable to From These Relationships

Across these relationships, harms include direct financial loss, cash flow instability, increased dispute resolution costs, and uncertainty in planning and investment decisions. Given small businesses' limited working capital, time, and personnel resources, even short payment delays or relatively small costs associated with faulty goods and services can create operational stress or threaten business viability.

Please refer to Appendices A and C for examples of detailed break-down of costs reported by members as a result of unfair trading practices.

If the Government were to introduce an economy-wide unfair trading practices prohibition that applies to business-to-business conduct:

Key Conduct / Issues that Should be Captured

MEA has three key concerns that should be addressed (we have referred to these collectively as the "three identified key issues" throughout the submission) –

- Faulty products and services
- Unfair Contract Terms
- Security of Payment

Refer to appendices A-C for more detail on each concern listed.

Existing Protections

The three key issues are already subject to existing regulatory frameworks; however, these are proving to be limited in their practical efficacy -

- *Faulty Products (See Appendix A)* – The Australian Consumer Law is intended to provide protections in relation to warranties and defective goods and services. However, these protections are vulnerable to being undermined in practice where manufacturers and suppliers refuse to take accountability for faults, leaving small businesses to absorb rectification costs and loss of productivity.

- *Unfair Contract Terms (See Appendix B)* – The Federal Government has recently introduced strengthened measures under the *Competition and Consumer Act 2010 (Cth)*. However, uncertainty remains as to which contractual clauses and practices are in fact 'unfair' (such as standard contract amendments) impacting small businesses in negotiations. MEA has consistently advocated for reforms to assist small business subcontractors including requiring any amendments to a standard form contract to be easily and clearly identifiable. .

- *Security of Payment (See Appendix C)–* There are differing Security of Payment (SOP) legislative frameworks across jurisdictions. While several reviews have been undertaken over the years, most frameworks still have substantial gaps, resulting in ongoing delayed or missed payments. While most security of payment issues relate to failure to pay / late payment / disputed payment, there are instances of non-payment that could fall within unfair trading practice protections.

Proposed Remedies

Although existing legal frameworks seek to address the identified there identified key issues, gaps remain in their practical operation, and enforcement mechanisms are often insufficient to prevent harm to small businesses. As a result, these vulnerabilities persist.

The proposed unfair trading practices framework could provide an appropriate mechanism to address aspects of these issues.

Eligible Relationships

The protections should generally apply to all business-to-business dealings where the supplying party is a large business, and the purchasing party is a small business. The supplying business could be subject to reasonably necessary exemptions to protect legitimate business interests provided there is an objective evidentiary burden to demonstrate the legitimacy and proportionality of the conduct.

The duration of the relationship should not be determinative, as small businesses can be equally vulnerable in one-off transactions (such as the purchase of goods) as they can in ongoing contractual relationships.

Harm Element

MEA supports the inclusion of a harm element as it reduces vexatious or trivial complaints while ensuring enforcement resources are directed towards conduct that causes genuine detriment. The harm element should include both financial and non-financial loss because harms such as business disruption, management time, and reputational impacts can also materially affect business operations and profitability.

Costs and Benefits

Extending protections would improve confidence, fairness, and integrity in business-to-business dealings, reduce the time and cost associated with resolving unfair trading practices, and support greater productivity and investment by small businesses. While some compliance costs may arise, these are expected to be limited, as businesses already engaging in fair trading practices should require only minor adjustments to existing processes. The greatest impact would fall on businesses engaging in unfair trading practices, rather than those already complying with their obligations.

Cost of Unfair Trading Practices for Small Businesses

Appendices A-C outline costs currently being incurred by small businesses in guarding against or attempting to avoid being harmed by unfair trading practices.

Would a new economy-wide unfair trading practices prohibition that applies to business-to-business conduct interact with other existing laws and regulations (such as industry codes)? How should any overlap or duplication be managed?

MEA considers that such a prohibition against unfair trading practices against small businesses in a business-to-business context should not replace the existing legal frameworks already governing the three key identified issues, but instead operate as a cross-cutting “safety net” mechanism that can be utilised in addition to any existing framework.

MEA considers that risk of duplication and overlap can be appropriately managed through the following principles:

- *Supporting Existing Frameworks –* The prohibition should be designed to ensure consistency and alignment with existing laws as well as addressing identified gaps in existing frameworks, with ongoing review as related regulatory frameworks evolve.

- *Avoidance of Duplication in Enforcement –* Regulators should be enabled to coordinate enforcement activity, supported by clear guidance to avoid inconsistent or duplicative action where sector-specific remedies are already available.

What costs or impacts would a new economy wide unfair trading practices prohibition that applies to business-to-business conduct have on businesses (e.g. compliance costs, changes to contracting practices or prices) and who would bear these costs? Please provide estimates where possible.

Larger Businesses / Suppliers / Manufacturers (supplying parties) - As noted earlier, supplying parties should already be conducting fair trading practices in their dealings with small businesses under current legal frameworks. Extending protections is therefore expected to strengthen trading integrity and would largely involve alignment and refinement of existing practices, rather than the creation of a materially new compliance framework. We expect the greatest burden to fall on those engaging in poor or bad faith trading practices with small businesses.

Audit and Enforcement - The ACCC would likely face increased enforcement, education, and advisory costs, particularly during initial implementation, although costs should be offset over time where the prohibition improves market conduct and reduces disputes.

Previous consultations identified barriers that prevent small businesses from enforcing their rights, including cost of legal action, fear of retaliation, and knowledge of rights. How would such barriers affect the effectiveness of any new protection?

Consideration could be given to strengthening confidential reporting pathways to enable small business complaints to be used as intelligence for ACCC tip-offs, risk monitoring, and pattern-based compliance activity, noting that concerns around commercial retaliation are likely to continue to limit direct reporting. Overall, we expect the proposed extended protections to improve trading integrity across supply chains by strengthening behavioural standards among larger parties.

Enforcement mechanisms such as penalty infringement notices would also assist.

Conclusion

Small businesses are the backbone of Australia's economy but continue to face significant power imbalances within supply chains. Our members frequently report issues relating to Security of Payment, unfair contract terms, and remedies for faulty products. While existing legislative frameworks governing these areas provide important protections, they continue to operate with practical and structural gaps that allow unfair trading practices to persist, resulting in financial loss, cash flow disruption, and operational inefficiency for small businesses.

It is therefore important that Government provide small businesses with the recognition of their role in the economy by providing confidence protections are being provided to support fairer trading practices. Extending unfair trading practice protections to small businesses in both business-to-consumer and business-to-business contexts would represent a clear and necessary step in strengthening the integrity of Australia's trading framework.

Such reform would not replace existing regulatory regimes but would instead operate as a complementary safeguard, capturing unfair conduct that falls outside or between current legislative protections. In doing so, it would help ensure that small businesses are not disadvantaged by their vulnerability of size.

Ultimately, extending these protections would demonstrate a clear commitment by Government to fair trading principles, improved market confidence, and a more balanced commercial environment in which small businesses can operate, invest, and grow with greater certainty and reduced exposure to unfair conduct.

MEA looks forward to the outcome of this consultation and is available for further discussion.

Appendix A – Faulty Products (Case Study)

The Issue

A significant and ongoing issue being faced by MEA members and other HVAC industry installers relates to faulty pair coil products used in air-conditioning installations. Members report recurring instances of micro-holes developing in pair coils, resulting in refrigerant gas leaks. Despite the widespread prevalence of these defects, manufacturers have consistently attributed the failures to installation error rather than recognising them as manufacturing defects.

The problem is further exacerbated because it can remain dormant for an extended period before the defect becomes apparent. In many cases, refrigerant leaks do not emerge until months or years after installation, leaving installers responsible for unexpected rectification work long after the original installation has been completed.

Our members advise they are regularly required to replace faulty pair coils at their own expense, shouldering the financial burden of products they purchased in good faith. Manufacturers continue to deny responsibility, while suppliers are often unable or unwilling to provide remedies where manufacturer claims have been rejected. This breakdown in accountability across the supply chain has persisted for at least half a decade.

Examples of Supplier Responses Reported by Members

MEA members have reported numerous examples where attempts to obtain warranty support or reimbursement have been unsuccessful, including:

- "[the Supplier] had done the testing on the pair coil that shows it not at Australian Standards – instead of helping they just went silent and closed our account"

- "[the pair coil] cost me in the vicinity of $1000. I approached [the Supplier] where I purchased the pair coil from and informed them there was an issue with it and I was seeking compensation for it. After some time they asked for the pipe testing, which I obliged. And that was the end of it. No more contact over the issue, they didn't want to know."

- "I had bought Polyair pair coil from [the Supplier] which I have had two systems leak but nothing has come from it. The manufacturer and supplier have denied any wrong doing."

- "…we footed the $600.00 bill for the replacement of the pip[e] and re gas of the machine"

Relevance to Unfair Trading Practices

This issue extends beyond a simple warranty dispute. It demonstrates how small businesses can be unfairly exposed to financial loss where accountability is effectively displaced throughout the supply chain.

The conduct reported by members raises several concerns that are directly relevant to an unfair trading practices framework, including:

- Denial of accountability across the supply chain, resulting in unresolved liability for defective goods;
- Misallocation of risk onto small business installers, despite goods being purchased and installed in good faith;
- Inability to obtain effective remedies, due to repeated rejection of claims by manufacturers and suppliers;
- Information and power asymmetry, where small businesses lack the resources to challenge technical or evidentiary claims made by larger upstream parties.

Collectively, these factors create an environment in which small businesses bear the consequences of defective products despite having no control over their manufacture.

Costs on Small Business Installers

The financial and operational impacts of this issue are significant and ongoing for small business installers.

Direct financial costs include:

- Replacement of defective pair coil products at the installer's expense;
- Rework and reinstallation labour costs;
- Loss of materials and consumables already installed in good faith.

Indirect and systematic costs include:

- Reduced business profitability due to repeated absorption of defective product costs;
- Cash flow pressure on small businesses operating on tight margins;
- Administrative time spent pursuing warranty claims that are ultimately denied;
- Reputational damage with customers thinking the installer is incompetent.

In many cases, installers are forced to choose between:

- Absorbing the cost themselves in order to maintain customer relationships and reputational integrity; or
- Passing costs onto end customers for rectification, resulting in increased consumer prices and reduced trust in the industry.

Neither outcome is equitable where the defect originates upstream within the manufacturing or supply chain.

Regulatory Gaps and Systemic Issues

In the past, the issue of faulty pair coils has already been put under the microscope. A survey was run by the Department of Climate Change, Energy, the Environment and Water (DCCEEW), and an industry forum brought together suppliers, installers, ARC and the DCCEEW to dig into the problem.

The findings pointed to no single brand or manufacturer, implying installer error. But with the volume of faults being reported, it's hard to accept that installers are solely to blame.

While the Australian Consumer Law provides remedies for defective goods, these protections have proven difficult to access where manufacturers dispute the cause of failure. Equally, the issue does not currently fit neatly within other regulatory frameworks. It has not generally been treated as a work health and safety matter, nor has it triggered broader environmental or product safety intervention.

Consequently, the issue has fallen between existing regulatory regimes, leaving installers without an effective avenue for obtaining timely remedies.

As a result, there are clear key regulatory gaps which include:

- Unclear accountability where multiple manufacturers and product types are involved;
- Limited practical enforceability of ACL remedies in cases where fault attribution is disputed;
- Absence of a rapid or accessible dispute resolution mechanism for installers;
- Inadequate mechanisms to address systemic product failures that fall short of recall thresholds.

Broader Consequences

The challenge is no longer just about cost recovery. Two growing risks are raising the stakes:

- Fire hazards: With the industry now shifting to flammable refrigerants such as R32, a faulty pair coil could quickly escalate from a maintenance issue to a fire danger due to gas leaks.

- Imported products: Reports continue to emerge of coils being sourced cheaply from overseas. Many of these fall short of Australian standards, making them more likely to be non-compliant and faulty.

These errors are not only environmentally harmful but also impose considerable costs on installers, who, despite not being at fault, are left covering the expense of replacements due to denied warranty claims.

Actions Sought by MEA Over the Years

Given the widespread nature of this issue, MEA believes a recall of the defective pair coil product/s is warranted with an official recognition of this problem as a manufacturing fault. This acknowledgment is crucial to enable installers to recover the costs they have incurred and to uphold fair and responsible practices within the industry.

Conclusion

The faulty pair coil issue provides a practical example of why business-to-business unfair trading practice protections are needed.

Small electrical contractors purchase products in good faith from larger suppliers and manufacturers, yet where those products subsequently fail, responsibility is repeatedly denied and the financial burden is transferred downstream to the installer. In many cases, installers absorb the rectification costs themselves to protect customer relationships, while others are forced to pass those costs onto consumers.

This case study demonstrates how existing regulatory frameworks can leave significant gaps where no party accepts responsibility, despite widespread evidence of systemic product failures. It illustrates the need for an economy-wide unfair trading practices framework that operates as a complementary safety net, ensuring small businesses are not left bearing the consequences of unresolved accountability within the supply chain.

Appendix B – Unfair Contract Terms

We continue to raise longstanding contractual concerns that significantly disadvantage subcontractors (commonly fulfilled by small businesses) and hinder project efficiency. MEA notes the Government's recent announcement of expansion of infringement notice powers for unfair contract term breaches, which would enable regulators to take faster enforcement action without lengthy court proceedings. This is a positive step.

We seek the ACCC to proactively audit subcontracts in the construction sector and take its own action, without requiring a complaint, to seek a ruling that terms are unfair for instances such as the following -

Contract Risk	Concern
Linking Subcontractor and Head Contractor Practical Completion	Subcontractor practical completion should not be linked to head contractor practical completion. This can result in harsh situations such as a subcontractor waiting many months to receive a practical completion payment and return of 50% of retention due to matters unrelated to their scope of work. Arguably such provisions are already unlawful as a 'pay when paid' provision under state laws, however it would be a useful clarification if the ACCC could bring about a determination on this type of clause as being an unfair contract provision.
Standard Form Amendments	MEA supports stakeholder demands for increased utilisation of standard forms in construction contracts. 'Standard form' contracts are rarely used without amendments, and often these are substantial changes. Subcontractors should not have to engage lawyers to review contracts for each tender process to check for changes to standard forms. Departures from standard form contracts must be easily identifiable by way of tracked changes, departures schedule or special conditions of contract.
Lack of Entitlement to Delay Costs	It is common for a head contractor to reschedule works or for there to be substantial delays on a project that are not due to any factors within

	a subcontractor's control. Often subcontractors are not entitled to delay damages in these circumstances. While subcontracts often provide for an extension of time they typically do not provide for delay costs for the subcontractor. Yet, subcontractors incur costs whether it be on site, off site, labour costs, loss of other work, etc. It has become very difficult for subcontractors to price this risk in up front due to the wide-ranging possible delays.

Appendix C – Security of Payment

The Issue

The construction industry has always faced issues of non-payment and insolvencies. In Australia, subcontractors complete over 80 per cent of construction work – one of the highest rates in the world to pass financial risk down the construction contracting chain.[1] The flow-on-effects of failures are broad, impacting the completion of projects.

When a head contractor becomes insolvent, subcontractors often go unpaid for completed work, shifting financial risk to those least able to absorb it. Losses, which can include materials, wages, and foregone earnings, quickly escalate into tens of thousands of dollars, threatening cash flow, business viability, and livelihoods. Persistent non-payment also undermines the sector's ability to deliver essential housing, health, and commercial infrastructure, highlighting the need for stronger protections for small-medium businesses.

Outside insolvencies, we continue to hear of trade contractors being unpaid for long periods, and builders refusing to return retention money.

Several reviews have been conducted, including the 2017 national review of Security of Payment Laws by John Murray AM. Since then, laws have been updated across the country, including the introduction of retention trust accounts in some jurisdictions.

Despite reforms, our 2025 joint industry survey shows slow and non-payment remain an issue for construction industry subcontractors (including electricians) with builders or head contractors often withholding retention money. Over 60% of respondents reported being unpaid in the past five years due to contractor insolvency, in both commercial and residential projects.

MEA considers retention money a key initial focus for governments across Australia. The industry survey results shows non-payment of retention money remains a significant

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[1] Department of Transport and Planning "Government Response to the Parliamentary Inquiry into employers and contractors who refuse to pay their subcontrators for completed work" *Victorian Government* [October 2024], at 3 <attachment-2---government-response---final-revisions.pdf>

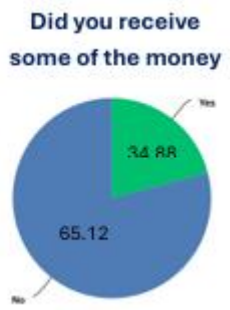
issue in the construction industry.

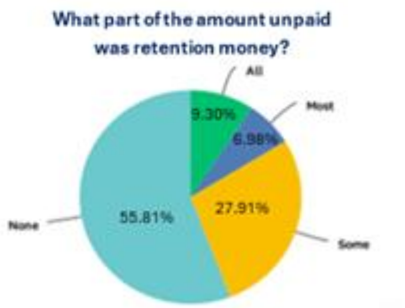
Costs Imposed on Small Business Contractors

A 2025 industry survey on security of payment1 found non-payment of subcontractors remains a critical issue across the electrical, fire, HVAC and plumbing construction sectors.

Over 60% of surveyed respondents identified that in the last 5 years they had been unpaid due to contractor insolvency.

Unpaid subcontractors were from a mix of commercial and residential sectors (or both). Of these, 65% responded they did not receive any of the money owed. Retention money contributed to non-payments, with 44% of respondents stating that at least part of the amount owed was retention money.





Of those with amounts unpaid, 21% were unpaid were by a residential builder. Additional details from the survey include:

Respondents were given the option of providing a comment on the impact of non-payment. Responses include:

- Mental health, marriage breakdown. Business significantly struggled.
- Stress, bad cash flow, less profit, HR issues
- Very stressful and frustrating, particularly when we work very hard in good faith and not be paid for reasons unknown. This has also impacted our personal finances.
- Reduced profits, restriction on business activity.
- Large time loss in follow ups • Indignation and fury that he (owner of business that didn't pay subcontractor) was allowed to start a new business with no ramifications whilst we were substantially out of pocket.
- Frustrated and angry about doing the right thing by others and not getting same in return.
- Loss of profit margin and reduction in cashflow
- The main concerning point is that when the process starts to collect overdue payments from this contractor, it can actually be used against you when it goes into liquidation as the liquidators have rights to those funds you gained under the pretence that you were aware of the financial position and the funds are part of the liquidated asset collection
- Losing $100k in the first 18 months of business is devastating but we recovered. Currently owed 20k from residential builder, coming up to 2 years so here we go again.
- It had me stressed somewhat. But only made me watch more carefully who we work for and to hold onto certification till all invoices have been paid in full.
- Was quite stressful with my directors and tendering for future jobs for builders
- Money gone
- I became very stressed
- Developed trust issues with outside contractors without formal training
- Financial stress for the business to cover materials and labour costings

Solutions Advocated for by MEA

MEA seeks the following measures be implemented to improve protection for small business contractors:

- *Harmonised SOP Framework -* For clarity around the country, let's take the aspects that are working well and harmonise SOP frameworks. This should also include improved retention fund protections.

- *Retention Fund -* Retention trust accounts are a good method of 'quarantining' subcontractor retention money in the event of insolvency, but don't address issues around subcontractors needing to be the ones to commence an adjudication for return of retention when a head contractor declines to make the payment. Subcontractors are hesitant to bring such action for fear of not getting future work. Most jurisdictions also do not permit adjudication for non-return of performance bonds such as bank guarantees. These cost subcontractors money when not returned.

  We believe a solution is to have a central authority to hold retention money, similar to government rental bond schemes, with simple online processes for lodging payments and reclaiming retention. This would reverse the onus when retention is due to be returned (i.e. the subcontractor requests it and the builder either agrees or disputes the return). It should apply to all cash retentions and non-cash bonds/guarantees held by contracting parties in the construction industry. The earnings on the fund could contribute to funding the administration costs and potentially contribute to the expansion of the FEG to subcontractors (see below).

- *Subcontractor Payment Guarantee (FEG) -* For a small business owner, lack of payment by a head contractor is akin to lost wages. We'd like to see a federal fund, similar to the FEG, to pay subcontractors for work if a head contractor becomes insolvent. Payments should be subject to reasonable limits and measures to avoid unreasonable claims.

Relevance to Unfair Trading Practices

MEA considers that persistent non-payment, delayed payment, and the unjustified withholding of retention money constitute unfair trading practices where larger contracting parties exploit their stronger position within the supply chain by effectively using small businesses as a source of working capital to finance other projects. This unfairly shifts financial risk and cash flow pressures onto businesses least able to absorb them.

Although Security of Payment legislation provides legal rights, many small contractors are reluctant to pursue those rights due to the cost of enforcement, unavailable funds by the head contractors, fear of losing future work, or commercial retaliation. As a result, legal protections do not always translate into practical outcomes.

MEA does not propose replacing existing Security of Payment legislation. Rather, business-to-business unfair trading practice protections should operate as a complementary safety net, capturing unfair conduct where existing legislative frameworks are unable to provide an effective or accessible remedy. This would help address ongoing power imbalances and strengthen protections for small businesses operating within construction supply chains.