

Unfair Trading Practices

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Master Electricians Australia (MEA) is the industry association representing electrical contractors 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

Small businesses often function more like customers/consumers due to their limited size and resources, leaving them vulnerable to power imbalances and significant financial risks. Many of our members have experienced issues such as non-payment on construction projects or bearing the burden of faulty products without compensation.

MEA strongly advocates for the Australian Consumer Law (ACL) to extend consumer protections to small business entities when dealing with suppliers or larger contractors. These businesses face similar risks of exploitation as individual consumers. Such reforms would foster a fair and competitive market, enabling small businesses like electrical contractors to thrive. This, in turn, would strengthen Australia's economy by safeguarding the stability of SMEs, which form its backbone.

MEA specifically advocates for national reforms to the Security of Payment (SOP) and Unfair Contracts legal frameworks. As key contributors to Australia's economy, it is imperative that small business contractors are safeguarded against the power imbalances that expose them to severe financial harm.

SOP

The construction industry is facing increasing insolvencies, where "1372 construction companies ... entered into external administration for the first time in 2023-24 compared to 981 in 2022-23, and 513 in 2021-22".¹ Notably, "in Australia, subcontractors complete over 80 per cent of construction work, the highest portion in the world to pass financial risk down the construction contracting chain."² The flow-on-effects of failures spread far and "the loss of subcontractor resources due to insolvency has already caused apartment development to slow on the Gold Coast. Just 15 projects were completed last year, while 133 were under construction or waiting to begin in the thinly supplied market."³

However, despite these significant risks to not only the subcontractors, but the wider economy, there is a real lack of legal security to protect the domino effect of failing construction contractors.

When the head contractor on a building project goes insolvent, it leaves a trail of destruction. Although many different stakeholders are affected in this scenario, one group who gets hit particularly hard is subcontractors who have worked on the project.

These businesses are either left waiting for a prolonged period to receive payment or, in some cases, left unpaid entirely for work conducted. This includes expenses for materials used, payment of staff, the earnings of the small business owner and the opportunity cost of other work foregone. This can easily lead into the tens of thousands of dollars, meaning when a head contractor goes bust it is not just inconvenient to the unpaid subcontractors but

¹ "Review of the Home Building Compensation Fund Supporting Information" NSW Government <[HBCF_Review_-_Supporting_Information.pdf](#)>

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

³ Michael Bleby "Big builders enjoy recovery as insolvencies hammer small players" *Australian Financial Review* [04 December 2024] <[Australia housing crisis: Big builders increase profitability as insolvencies rise among smaller contractors](#)>

potentially fatal to their business and even their livelihood. For a small business owner, being left unpaid for work done is akin to losing wages.

MEA is calling on the Federal Government to lead the way in providing reform that finally provides an adequate resolution to this critical important issue. Specifically, MEA calls for:

1. Australian jurisdictions to agree to implement harmonised security of payment legislation, generally in accordance with recommendations from the 2017 *Murray Review*.
2. Holding of retention money by a central authority – similar to government rental bond schemes.
4. The Federal Government establish a scheme for subcontractor payments following insolvency of the head contractor based on the Fair Entitlements Guarantee (FEG). To an extent, such a scheme could be funded by earnings on the centralised retention holding scheme outlined above.
5. Harmonised security of payment legislation should also include provisions that the contracted party (e.g. subcontractor) may at any time elect to substitute non-cash security (e.g. bank guarantee) with cash retention. Also, prohibit the linking of subcontractor practical completion to that of head contractor.

We invite you to read further details about MEA's proposed SOP framework [here](#).

Unfair Contracts

MEA applauds the expansion of unfair contract terms in federal legislation. Now, more than ever, subcontractors in the electrical industry need stronger protections in place to ensure fair treatment.

While the expanded legislative framework is an important step in the right direction, it relies on a subcontractor bringing legal proceedings, unless the ACCC is prepared to do so. MEA advocates for a framework where terms can be declared unfair, such as prohibiting unidentified changes to standard form contracts (e.g. a 'standard contract' with clause changes that are not identifiable by tracked changes, special conditions or departure schedules).

In addition, subcontractors should be paid for delays outside their control. Government projects could set an example by mandating this to their head contractors.

You can read more about our unfair contract position [here](#).

Actions to Support Small Businesses

In addition to MEA's proposed reforms to the Security of Payment (SOP) and Unfair Contract Terms frameworks, we advocate for further measures to support small businesses and reduce their vulnerabilities in the supply chain, including:

- Improved access to dispute resolution
- Provision of educational material that is easily understandable and accessible
- Online Advertising
 - Prevent platforms from imposing excessive fees on small businesses
 - Transparent ranking algorithms
 - Fair pricing structures for platform fees

Case Study Example – Faulty Pair Coils

A current ongoing issue being faced by MEA's members is the ongoing trouble relating to faulty pair-coil products used in air-conditioning installation. Our members advise they are having to replace the product at their own cost, shouldering a financial burden for a faulty product they purchased in good faith, as manufacturers are denying any responsibility. Dismissal of responsibility across the supply chain has persisted for at least two years. It is unjust for our members and other installers to bear these costs. A rapid dispute resolution process would assist small business installers.

Conclusion

Small contractors, with limited resources and negotiating power, are particularly vulnerable to the unfair practices of larger supply chain operators. This power imbalance often leaves small contractors inadequately protected. Small businesses should be offered greater protections as many are akin to consumers.