

26 July 2022

Labor's unfair contract terms ban creates even playing field for David vs Goliath

The National Electrical and Communications Association (NECA) has applauded the Federal Government's plan to introduce legislation strengthening unfair contract term protections for small businesses and consumers.

According to the Government, the amendments will introduce civil penalty provisions outlawing the use of, and reliance on, unfair terms in standard form contracts. This will enable a regulator to seek a civil penalty from a court.

NECA welcomes the increasing number of businesses that will be afforded protections by lifting the small business eligibility threshold from less than 20 employees to less than 100 employees and introducing an annual turnover threshold of less than \$10 million as an alternative threshold for determining eligibility.

Commenting on the amendments, Oliver Judd, CEO of NECA, said, "finally, David has equal standing with Goliath, with a fair chance of contract term negotiations. This long overdue legislative change will protect more of NECA's members and the broader network of small businesses, workers, and consumers from being taken advantage of by larger businesses.

"Far too often, hardworking Mum & Dad small businesses are destroyed by contracts they are forced into by the heavy hand of bigger businesses. Small businesses don't have the resources to challenge the power imbalance they face. Whether it's from large legal teams or the threat of not being awarded a contract unless they accept terms, these businesses just want an even playing field to negotiate sustainable and fair contracts."

NECA, a long advocator for greater protection of small businesses, encourages the Labor Government to continue to take further actions to protect small businesses by:

- making unfair contracts illegal
- preventing the amendment of Standards Australia Standard Form Contracts under licence to third parties
- preventing sub-contracts unfairly shifting project risk from the principal contractor to subcontractors.

NECA has also requested the Federal Government urgently address reforms to the security of payments scheme, which would ensure adequate protection for contractors and subcontractors against insolvency. To protect small businesses, NECA has recommended the following be adopted:

1. That the Federal Government enact the world leading golden standard Security of Payment regime.
2. That the Security of Payment regime includes a "cascading trust/deemed trust" scheme to apply throughout the contractual chain for all projects over \$1 million.
3. That the "cascading trust/deemed trust" scheme to apply to retention monies.
4. That the Security of Payment regime provides that unfair contract terms are void.

ENDS