

31 March 2020

The Hon. Christian Porter, MP  
PO Box 6022  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

Dear Attorney-General,

I am writing to you on behalf of the National Electrical and Communications Association (NECA) regarding 'Liquidated Damages' provisions within construction contracts, and their potentially catastrophic impact to Australia's building and construction sector in light of the COVID-19 crisis.

As you would be aware, construction contracts will often include terms which require subcontractors to pay lead contractors a sum of money for a delay in the completion of projects, this is referred to as 'Liquidated Damages'. On many large projects, the risk associated with a delay is imposed on subcontractors who enter into one sided contracts as they have little or no bargaining power when it comes to amending the contractual terms. As a result of the risk for delays being passed on the subcontractors, subcontractors have little or no entitlement to claim an extension of time for these delays. This is both unfair and unreasonable.

Given the current economic and social landscape associated with the COVID-19 crisis, the unfair position that subcontractors find themselves has been further exacerbated as subcontractors will be severely impeded by their ability to undertake the works as prescribed by the construction contract. This has the potential to trigger a number of Liquidated Damages claims which will be devastating for the building and construction industry. It is without exaggeration that the potential collapse of the building and construction industry is foreseeable unless government intervention is forthcoming.

I write to urgently seek that the Government's support to introduce a moratorium on 'Liquidated Damages' provisions within construction contracts, and for this to apply for at least the term of the Governments Staged Restrictions being imposed on communities and business. This may save many SME's from the brunt of the fallout that is to follow

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from the COVID-19 pandemic. SME's are the subcontractors exposed to the majority of the Liquidated Damages risk.

It should be noted that approximately 30% of all building and construction works are government funded. In this regard, government has a lead role to play in the imposing a moratorium. Similarly, in the context of non-government funded projects, NECA is strongly of the view that government should play a defining role in applying the same commercial tenancy principals which were recently announced, that is that a moratorium be applied to any penalties as a result of the COVID-19 crisis.

Should you have any questions or wish to discuss this matter further, please don't hesitate to contact me on (02) 9439 8523 or [suresh.manickam@neca.asn.au](mailto:suresh.manickam@neca.asn.au)

I am looking forward to your response.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Suresh Manickam', with a horizontal line underneath.

Suresh Manickam  
**Chief Executive Officer**  
**National Electrical and Communications Association**

CC:

The Honourable Karen Andrews MP  
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