Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Corporate Insolvency

CFMMEU Response to Questions Taken on Notice

Costs of Cascading Trusts

The Hon Keith Pitt MP asked the following question:

"***Mr PITT:*** *This is a question for Mr Noonan. I apologise; I wasn't previously on this committee and I haven't read that report. Can you give us a run-through on the cascading trusts proposal and how that is likely to work and what it might cost to operate*?" (p.25 of Hansard from 21st February 2023).

<u>Response</u>

The CFMMEU would firstly point out that there have been many reports produced over recent years, based on economic modelling, on the financial costs of different issues in the building and construction industry. The results of the economic modelling are prone to be skewed towards the interests of those commissioning the study. The CFMMEU would therefore suggest that the Committee approach any such reports with caution. Any economic modelling on the costs of operating cascading trusts should take into account the negative impacts of insolvency on workers and their families and the costs they incur if nothing changes.

The CFMMEU have not commissioned any studies on the cost benefit analysis of cascading trusts.

The only analysis we have found so far is that contained in the Executive Summary of the Australian Small Business and Family Enterprise Ombudsman working paper on "*Cascading deemed statutory trusts in the construction sector*", November 2018, which stated the following:

> "***Our findings on cascading deemed statutory trusts***
>
> *We had an expert in SME accounting work through some scenarios to find out the costs of running statutory trust accounts.*
>
> *We found that for medium businesses (20 employees), the cost is small at 0.1% of annual revenue.*
>
> *The costs are moderate for businesses with 2-10 employees at around 2% of annual revenue, but are higher for a sole operator at 3.5 to 4% of annual revenue*." (p.4)

Based on the above estimates the cost to larger businesses would be expected to be less than 0.1% of annual revenue.

Although no specific figures were included, the final report of the December 2017 *Review of Security of Payment Laws* (the Murray Report) said the following on the increased administrative burden of cascading trusts:

> "*The fundamental point that needs to be underscored is that the concept of a deemed statutory trust is the* ***only*** *proposal that will provide a cost-effective and fair means of dealing with a party's entitlement to be paid. Insofar as industry participants reject the concept of a deemed statutory trust because of increased administrative burden, then the evidence from the various previous inquiries that had considered this very issue, suggests otherwise. Both the WA Law Reform Commission and the Collins Inquiry specifically addressed the issue of administrative burden and concluded that this would not be the case*." (p.308)

Indirectly related to cascading trusts are project accounts. Whilst these do not provide the same level of security, the CFMMEU would bring to the attention of the Committee that there have been studies done on the cost benefit analysis of improving security of payments in the building and construction industry including the use of project accounts. The July 2020 report by Deloitte Access Economics, *Cost Benefit Analysis of Security of Payment Reform for the Building and Construction Industry*, prepared for the WA Department of Mines, Industry Regulation and Safety, said the following on the Benefit Cost Ratio (BCR) of implementing the reforms,

> "Net benefits are expected to be positive for each of the three sub-sectors of the construction industry, with the residential building, non-residential building and engineering components of the construction industry each accruing a BCR of 2.1, 1.7 and 2.3 respectively." (p.21)