

5 January 2022

Hon Eleni Petinos MP  
Minister for Fair Trading  
Minister for Small Business  
Member for Miranda  
GPO Box 5341  
SYDNEY NSW 2001

Via email: [office@petinos.minister.nsw.gov.au](mailto:office@petinos.minister.nsw.gov.au)

Dear Minister

**RE: Impact on small businesses of government agencies contracting out proportionate liability in construction contracts**

I am writing regarding the practice of some NSW Government agencies to contract out Part 4 of the *Civil Liability Act 2002* in construction contracts, and the impact this is having on small businesses.

By way of background, the Association of Australian Certifiers represents registered certifiers employed in private practice and in local government in NSW. Most of our private certifier members are either owners and operators of small businesses or sole operators.

NSW Government agencies contracting out proportionate liability is of concern to our members, and other building practitioners, who work on government construction projects, because it both increases insurance premiums and disproportionately exposes small businesses and sole operators to liability.

The practice also seems to contradict the recommended policy set out in the NSW Government's [Procurement Policy Framework](#), which states:

*"You may only contract out of Part 4 of the Civil Liability Act 2002 in a construction contract when an assessment clearly demonstrates that it is justified."*

Our concern is that this practice is becoming standard practice, rather than only when it is clearly justified.

As mentioned, this is not only an issue for our small business members, but is also potentially disadvantages government, as outlined in the [NSW Procurement Board Direction 017-03 Civil Liability Act 2002 - proportionate liability](#):

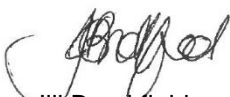
*"Contracting out can pose potential disadvantages to both suppliers and government. For example, contracting out can expose suppliers to significant liability regardless of the size of their actual contribution to the loss. It potentially limits competition among suppliers because of increased insurance costs, thereby reducing the range of suppliers with whom the government may deal. Further, such costs may be passed on to government agencies through higher prices for services."*

We therefore request that the NSW Government investigates whether this practice is being appropriately justified by agencies as per the government's Procurement Policy Framework.

The AAC would welcome the opportunity to discuss this matter further with you or your office.

I can be reached on 0431 082 259 to discuss further. I look forward to hearing from you.

Yours sincerely



Jill Brookfield  
Chief Executive Officer