



Construction Contracts Amendment Bill

October 21st, 2015

Dear members

I am pleased to announce that the Construction Contract Amendment Bill was passed through Parliament on Tuesday 22nd October, along with a Supplementary Order Paper covering provisions for the timely payment and protection of retention payments in the construction industry.

This is arguably the biggest step in securing payments for subcontractors since the passing of the Construction Contracts Act in 2002. The Bill comes into force in three stages, 1st December, 2015, 1st September 2016 and 31st March 2017. The section relating to retentions commences 31st March 2017, allowing ample time for the industry to prepare for the changes and avoid any unforeseen negative impacts.

The biggest change in the legislation is that any money held as a retention is held in trust for the party who is owed the money. This means that if a company fails while holding retention payments, the retention money can only be used to pay out the party the retentions were held from or to remedy defects in that parties work. Directors of a company that fails and cannot account for the money owed on retentions are criminally liable.

Furthermore, retentions must be paid when they are due, pay when paid clauses relating to retentions are outlawed and a default interest rate will be payable on overdue amounts.

As an example, if this legislation had been enacted before Mainzeal collapsed, around \$18 million would have been paid out to subcontractors owed retentions. As it was, this money was paid to secured creditors and the liquidator.

Minister Nick Smith has said this legislation will have broad effects on the commercial behaviour of the industry. Developers or main contractors with insufficient working capital can no longer draw on retentions to fund their operations. The risk is transferred to banks and finance houses which have the means to assess the financial strength of the business.

The STCF intends to run an educational programme outlining the changes in the legislation and how this can benefit your business.

Finally, I would like to thank all those individuals and organisations who have supported the campaign leading up to this change in legislation.

Yours sincerely,

Graham Burke