

# House of Representatives

# Supplementary Order Paper

Thursday, 17 April 2014

## Construction Contracts Amendment Bill

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*Proposed amendment*

Hon Clayton Cosgrove, in Committee, to move the following amendment:

*New clause 9B*

After *clause 9A* (page 7, after line 23), insert:

**9B New section 24AA inserted (Trust account requirements for retention money)**

After section 23, insert:

**“24AA Trust account requirements for retention money**

- “(1) The Governor-General may, by Order in Council, make regulations requiring—
- “(a) retention money for commercial and industrial developments to be held in trust for the subcontractor entitled to the money; and
  - “(b) the head contractor who holds retention money to pay the money into an independent trust account (a **retention money trust account**) established and operated in accordance with the regulations.
- “(2) Without limitation, regulations made under this section may additionally provide for the following:
- “(a) the procedures to be followed in connection with the authorisation of payments out of a retention money trust account:
  - “(b) the keeping of records in connection with the operation of a retention money trust account and the inspection of those records by the Auditor-General:
  - “(c) the resolution of disputes in connection with the operation of a retention money trust account.
- “(3) In this section,—

“**commercial and industrial developments** means all works undertaken that are not intended as a sole residential dwelling, or such works as may be defined by Order in Council

“**head contractor** means the person who is to carry out construction work or supply related goods and services for the principal under a construction contract (the main contract) and for whom construction work is to be carried out or related goods and services supplied under a construction contract as part of or incidental to the work or goods and services carried out or supplied under the main contract

“**principal** means the person for whom construction work is to be carried out or related goods and services supplied under a construction contract (the main contract) and who is not themselves engaged under a construction contract to carry out construction work or supply related goods and services as part of or incidental to the work or goods and services carried out or supplied under the main contract

“**retention money** means money retained by a head contractor out of money payable by the head contractor to a subcontractor under a construction contract, as security for the performance of obligations of the subcontractor under the contract

“**retention money trust account** is a trust account held under the custody of, and adjudicated by, the Public Trust in which retention payments must be held, or, is a trust account or other device held independently of both the contractor and subcontractor, that meets the requirements laid out in Order in Council

“**subcontractor** means a person who is to carry out construction work or supply related goods and services under a construction contract otherwise than as head contractor.”

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### **Explanatory note**

There is currently no statutory requirement for how retention payments are held by head contractors. Head contractors are free to use funds held in retentions as they see fit. Problems therefore arise when retention funds are used to leverage credit and pursue further developments. When such developments fail, subcontractors are relegated to unsecured creditors when it comes to recovering their retention money. This Supplementary Order Paper redresses that problem by requiring retention money for commercial and industrial developments to be held in trust for the benefit of the subcontractor entitled to the money.

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