



COVERSHEET

Minister	Hon Poto Williams	Portfolio	Building and Construction
Title of Cabinet paper	Construction Contracts Act 2002: Further Amendments to Retention Money Regime	Date to be published	5 May 2021

List of documents that have been proactively released		
Date	Title	Author
17 March 2021	Construction Contracts Act 2002: Further Amendments to Retention Money Regime	Office of Hon Poto Williams
22 March 2021	Construction Contracts Act 2002: Further Amendments to Retention Money Regime – Minute of Decision	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld to protect the confidentiality of advice tendered by ministers and officials..



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Construction Contracts Act 2002: Further Amendments to Retention Money Regime

Portfolio **Building and Construction**

On 17 March 2021, the Cabinet Economic Development Committee:

Background

1 **noted** that:

- 1.1 on 25 May 2020, Cabinet agreed to a further package of legislative changes to the Construction Contracts Act 2002 (the Act) to strengthen and clarify the retention money regime [CAB-20-MIN-0239];
- 1.2 the proposed changes will support a high-performing building and construction sector, and align with previous Cabinet decisions to amend the retention money regime;

Safeguarding retention money while balancing costs to industry

- 2 **noted** that the amended Construction Contracts Act 2002 (the Act) will clarify that retention money will be held separately on trust;
- 3 **noted** that the use of liquid assets as retention money creates additional risk and uncertainty to subcontractors;
- 4 **agreed** that retention money held as cash may be held aside separately in a bank account with prescribed ledger accounts;
- 5 **agreed** to amend the Act to remove the use of liquid assets as a way of holding retention money;

Improving the transparency of retention money

- 6 **noted** that regular reporting and confirmation of retention money held will provide greater assurance to subcontractors;
- 7 **agreed** to amend the Act to require that a confirmation of retention money held be provided on the transfer of retention money into a separate account or when retention money is held as a complying financial instrument;
- 8 **agreed** to amend the Act to require information on the status of any retention money held be provided at least every three months;

Offences and penalties

- 9 **agreed** to amend the Act to introduce an offence for providing false information on retention money under the Act;
- 10 **agreed** to a maximum penalty amount of \$50,000 for providing false information on retention money held under the Act;

Interface between the Act and the Public Finance Act 1989

- 11 **noted** that the core Crown is subject to provisions for trust money under part 7 of the Public Finance Act 1989;
- 12 **agreed** that where there is a duplication of provisions for trust money for the core Crown under the Public Finance Act and the retention money regime under the Construction Contracts Act, the Crown be subject to the existing provisions under the Public Finance Act;

Commencement

- 13 **noted** that the new requirements will come into force six months after Royal Assent, and will apply to new construction contracts, and renewed or new construction contracts entered into for an existing project;

Legislative implications

- 14 **noted** that the above proposals will be given effect through a Construction Contracts (Retention Money) Amendment Bill;
- 15 **invited** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 16 **authorised** the Minister for Building and Construction to make decisions consistent with the proposals in the paper under DEV-21-SUB-0031 on any issues which arise during the drafting process.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Kris Faafoi
Hon Dr David Clark
Hon Dr Ayesha Verrall
Hon Meka Whaitiri
Hon Phil Twyford
Rino Tirikatene, MP
Dr Deborah Russell, MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:

Minister for Building and Construction