



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Building and Construction
Title of Cabinet paper	Construction Contracts (Retention Money) Amendment Bill: Supplementary Order Paper	Date to be published	11 November 2022

List of documents that have been proactively released

Date	Title	Author
June 2022	Construction Contracts (Retention Money) Amendment Bill: Supplementary Order Paper	Office of the Minister for Building and Construction
2 June 2022	Construction Contracts (Retention Money) Amendment Bill: Supplementary Order Paper LEG-22-MIN-0091 Minute	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 for the reason of Confidential advice to Government.

In Confidence

Office of the Minister for Building and Construction

Chair, Cabinet Legislation Committee

**Construction Contracts (Retention Money) Amendment Bill:
Supplementary Order Paper**

Proposal

1. I seek Cabinet's approval to lodge a Supplementary Order Paper to clarify who will enforce the retention money regime and make minor and technical changes to the Construction Contracts (Retention Money) Amendment Bill.

Executive Summary

2. The Construction Contracts (Retention Money) Amendment Bill (the Bill) strengthens and clarifies the existing retention money requirements in the Construction Contracts Act 2002 (the Act).
3. On 9 February 2022, Cabinet approved changes to be made to the Bill via a Supplementary Order Paper. These changes clarify that Chief Executive responsible for administering the Construction Contracts Act 2002, currently the Chief Executive of the Ministry of Business, Innovation and Employment (the Chief Executive), will enforce the retention money regime [DEV-22-MIN-0006 refers].
4. Cabinet also authorised me to make additional policy decisions and minor or technical changes, consistent with the policy intent of that paper, on issues that arise during the drafting of the Supplementary Order Paper [DEV-22-MIN-0006 refers]. As such, I have agreed to add to the Supplementary Order Paper additional powers, functions and offences to support the enforcement function of the Chief Executive under the Act. These are:
 - 4.1. powers enabling the Chief Executive to request any information and documents considered reasonably necessary for monitoring, investigating or enforcing compliance with the retention money regime, and to take proceedings for offences;
 - 4.2. additional offences for failing to comply with a request from the Chief Executive for information or a document, and providing false or misleading information or a document to the Chief Executive.
5. The Supplementary Order Paper will also include minor and technical changes to the Bill.
6. I intend to introduce the Supplementary Order Paper during the Committee of the whole House stage.

Background

7. The Bill amends the Act to clarify and strengthen the retention money regime. The Bill makes changes by [CAB-20-MIN-0239, CAB-21-MIN-0074 refer]:
 - 7.1. clarifying the existing trust requirement and improving the transparency of how retention money is held;
 - 7.2. introducing offences, penalties, and defences to improve compliance; and
 - 7.3. clarifying how retention money is administered in the event of insolvency.
8. The Bill had its first reading on 8 June 2021 and was referred to the Transport and Infrastructure Committee. It was reported back to the House on 22 November 2021. The Bill is currently awaiting its second reading.
9. I intend to make changes to the Bill via a Supplementary Order Paper during the Committee of the whole House stage. These changes include a clarification that the Chief Executive responsible for the Act (currently the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE)) will enforce the offences introduced in the Bill, as well as minor and technical changes to the Bill [DEV-22-MIN-0006 refers].

The Chief Executive of MBIE will enforce the offences introduced in the Bill

10. The Bill introduces offences, penalties and defences for companies and directors who fail to comply with the retention money requirements.
11. During the select committee process, submitters on the Bill supported introducing offences but also wanted clarity on who will enforce the retention money regime.
12. To address this, Cabinet agreed that the Chief Executive responsible for administering the Act be given the function to investigate and enforce the newly introduced offences in the Bill, if the Chief Executive considers that it is desirable to do so [DEV-22-MIN-0006 refers]. For example, this may be where, following investigation, there is a compelling public interest in prosecution. The Chief Executive of MBIE is currently responsible for administering the Act.
13. Cabinet also agreed that the building levy will be used to fund the new investigation and enforcement functions. The levy will also be used to fund MBIE to:
 - 13.1. provide information and education on the retention money regime;
 - 13.2. monitor compliance with the retention money regime; and
 - 13.3. provide advice to the Minister for Building and Construction on the retention money regime [DEV-22-MIN-0006 refers].
14. To support the new functions of the Chief Executive, I propose additional powers to request information, documents, and examinations or audits of bank accounts; and prosecute and initiate court proceedings. Without these powers, the Chief Executive will not be able to effectively carry out the enforcement function. The

Chief Executive would also be unable to investigate whether or not there has been a breach of the requirements of the retention money regime and unable to act on their findings where appropriate.

15. I propose there also be additional offences for not complying with the Chief Executive's request to provide information, and for impersonating the Chief Executive or a warrant holder. These additional offences are necessary to provide consequences where people ignore requests for information or knowingly provide false or misleading information.

Impact Analysis

16. A Regulatory Impact Summary was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet approval was sought for the policy relating to the Amendment Bill [CAB-20-MIN-0239 refers]. MBIE's Regulatory Impact Analysis Review Panel determined that it met the criteria necessary for Ministers to make informed decisions on the proposals.
17. Treasury's Regulatory Impact Analysis Team has determined that the proposal to amend the Act, in order to clarify enforcement of offences introduced in the Bill, is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.
18. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Compliance

19. The Bill complies with each of the following:
 - 19.1. the principles of the Treaty of Waitangi;
 - 19.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 19.3. the disclosure statement requirements (a disclosure statement was prepared and attached at the time Cabinet approved the Bill for introduction [LEG-21-MIN-0063]; a supplementary disclosure statement is attached);
 - 19.4. the principles and guidelines set out in the Privacy Act 1993;
 - 19.5. relevant international standards and obligations;
 - 19.6. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

20. The Transport and Infrastructure Committee received 42 written submissions on the Bill and heard seven oral submissions. These included submissions from industry,

legal and insolvency professionals, local government and individuals. Submitters were largely supportive of the general intention of the Bill to clarify and strengthen the retention money regime.

21. The following agencies and Crown entities were consulted on the proposals in this paper: Ministry of Housing and Urban Development, the Treasury, Te Puni Kōkiri, Kāinga Ora, Department of Internal Affairs, Ministry for the Environment, Ministry of Health, Ministry of Education, Department of Corrections, Ministry of Justice, Waka Kotahi NZ Transport Agency, Inland Revenue Department, Infrastructure Commission, and WorkSafe New Zealand. No issues were raised regarding the proposal in this paper.
22. The Department of the Prime Minister and Cabinet has been informed.

Binding on the Crown

23. The Act binds the Crown. The Bill does not amend this provision.

Commencement of legislation

24. The new requirements will come into force six months after Royal Assent. The new requirements will apply to new construction contracts entered into six months after Royal assent.

Parliamentary stages

25. The Bill was introduced on 1 June 2021, reported back to the House on 22 November 2021 and is now awaiting its second reading. Confidential advice to Government
26. The Supplementary Order Paper will be lodged with the Clerk of the House ahead of the Bill's consideration by the Committee of the whole House.

Proactive Release

27. This paper will be published on MBIE's web site within 30 days, subject to withholdings as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Building and Construction recommends that the Committee:

1. **note** that the Construction Contracts (Retention Money) Amendment Bill amends the Construction Contracts Act 2002 to clarify and strengthen the retention money regime;
2. **note** that Cabinet approved the introduction of the Construction Contracts (Retention Money) Amendment Bill on 20 May 2021 [LEG-21-MIN-0063];
3. Confidential advice to Government

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4. **note** that the Construction Contracts (Retention Money) Amendment Bill was reported back to the House by the Transport and Infrastructure Committee on 22 November 2021;
5. **note** that the Minister for Building and Construction intends to make the following changes at the Committee of the whole House stage via the attached Supplementary Order Paper:
 - 5.1. that the Chief Executive responsible for administering the Act be given the function to investigate and enforce the newly introduced offences in the Bill, if the Chief Executive considers that it is desirable to do so;
 - 5.2. that the Chief Executive responsible for administering the Act be given functions to support retention money regime investigation and enforcement function, namely to:
 - 5.2.1. provide information and education on the retention money regime;
 - 5.2.2. monitor compliance with the retention money regime;
 - 5.2.3. provide advice to the Minister for Building and Construction on the retention money regime;
 - 5.3. that the Chief Executive responsible for administering the Act be given the power to:
 - 5.3.1. request any information or that is reasonable and necessary for the purpose of monitoring, investigating or enforcing compliance with the retention money regime;
 - 5.3.2. take enforcement action, including taking proceedings for offences;
 - 5.3.3. apply for a search warrant if they are satisfied that there are reasonable grounds that an offence is, or will be, committed and belief that there is evidential material there.
 - 5.4. that an offence for intentionally failing to comply with a request or direction of the Chief Executive responsible for administering the Act to provide any information and document be added, with a fine not exceeding \$50,000 for individuals found liable and a fine not exceeding \$200,000 for bodies corporate found liable;
 - 5.5. that an offence for providing false or misleading information or a document, or information or a document with a material omission, to the Chief Executive be added, with a fine not exceeding \$50,000 for individuals found liable and a fine not exceeding \$200,000 for bodies corporate found liable;
 - 5.6. that an offence for obstructing or hindering the Chief Executive in executing their search powers be added, with a fine not exceeding \$50,000 for individuals found liable and a fine not exceeding \$200,000 for bodies corporate found liable;

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- 5.7. minor and technical changes to improve drafting;
6. **note** that the Building Act 2004 allows the building levy to be used for, or in connection with, the performance of the Chief Executive's functions under the Construction Contracts Act 2002;
7. **authorise** the Minister for Building and Construction to make any necessary minor or technical changes to the Supplementary Order Paper prior to lodgement;
8. **agree** that the Supplementary Order Paper be lodged ahead of the Bill's consideration by the Committee of the Whole.

Authorised for lodgement

Hon Poto Williams

Minister for Building and Construction