



WHITE PAPER

It's time for a fair deal for subcontractors: protect retention payments

What are retention payments?

Retention payments are a common construction industry practice of unfairly withholding money belonging to subcontractors, for a period, sometimes years, after the work is complete.

They unfairly withhold money belonging to subcontractors, threatening their livelihood and those that depend on them.

Even though the money belongs to the subcontractor, they have no control over it and it is generally unsecured. So, if the primary contractor goes broke (such as Mainzeal this year and Alliance Construction Limited last year), the subcontractors are at risk of never being paid.

When Mainzeal went into liquidation it owed \$70 million to subcontractors; \$20 million of that was in retention payments.

The Mainzeal collapse is just the tip of the iceberg - it wasn't the first and it won't be the last.

Our proposed solution

The Construction Contracts Act 2002 must be amended to protect retention payments by default in all construction contracts.

The amendment should provide a new default provision allowing the payee to provide a bond in lieu of retentions. It should also provide that the parties can contract out of that default provision by mutual agreement.

These bonds already exist (such as New Zealand Standard NZS3910:2003) but are rarely able to be used because the main contractor currently has the ability to contract out of them and most do.

It should be the subcontractor's choice, not the main contractor's choice, whether or not to use bonds.