



Submission to

Commerce Select Committee

On the Regulatory Systems (Commercial Matters) Bill 2016

SUBMITTED BY

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INTRODUCTION

Civil Contractors New Zealand Inc (CCNZ) represents the interests of 400 civil and general contractor members. Our members range from large international companies to small family businesses.

Subcontracting is a prominent feature of the civil and general contracting industry. It allows companies to engage the specialist expertise, capabilities and capacity required to deliver complex construction contracts.

Large head contractors subcontract work to a range of companies but at times small companies also subcontract components of the work they do to large contractors e.g. a builder that subcontracts a large road construction firm to lay a drive way.

Subcontracting is a key feature of the construction industry and contributes significantly to the industries productivity and efficiency.

Similarly clients including developers, Councils, Government Agencies and Crown entities hold retentions on head contractors to ensure performance of the contract.

This is a very important issue for our members and therefore we would like to appear before the Select Committees should hearings be held.

SUBMISSION

CCNZ's submissions focus on Part 4 of the Bill which deals with the amendments to the Construction Contracts Act 2002 and in particular the transitional provisions for the new retentions regime that were introduced as part of the Construction Contracts Amendment Act 2015.

We support the new retentions regime but are disappointed that the industry, accountants and lawyers with a day to day working knowledge of the construction industry have not been better engaged in the development of the new regime.

CCNZ supports the proposed amendment contained in Part 4 clauses 137 & 138 of the Regulatory Systems (Commercial Matters) Bill 2016 following reasons

1. The current requirements mean that a very significant amount of liquid assets (\$250 million according to the 2014 MBIE Regulatory Impact Statement or a minimum of \$600 million according to recent industry estimates) will be required to be held by clients and contractors when the new regime takes effect on 31 March 2017.

By amending the provisions so that they only apply to contracts signed or renegotiated after 31 March 2017 will mean that the additional amount of liquid assets required by the industry will be built up over time as new contracts are entered into and work on those contracts is completed by contractors and subcontractors. This gradual increase will be more manageable for the industry and will mean that they can effectively work into the new regime over time. The significant overnight increase in the amount of liquid assets required to be held is likely to be very difficult for some companies to manage and may therefore create industry disruption and uncertainty.

2. The current requirements mean that the new regime will apply to contracts that have been signed prior to 31 March 2017. The parties to those contracts may have considered and agreed to different contract provisions had they been aware of these new provisions e.g. they may have relied on bonds rather than retentions.

While many industry participants have been thinking about this over the past year most have been waiting on regulations that provide more detail around the definition of “liquid asset” and the accounting processes that will be required. (see comments below)

While the Act was passed into law late in 2015 there is still a high degree of uncertainty within the industry regarding the details of how the new regime will work. The phased introduction will be beneficial as more details will be available as at 31 March 2017 and contractors and subcontractors will be able to make informed choices about the contracts they are entering into.

3. It is CCNZ’s clear understanding that the original intent of the Construction Contracts Amendment Act 2015 was that the transitional arrangement for retentions would be that they would apply to contracts signed from 31 March 2017 onwards. Our initial discussions with MBIE following the passing of the Act confirmed that they were of the same view. This amendment is therefore correcting a drafting error within the Act.

FURTHER CLARIFICATION IS URGENTLY NEEDED

CCNZ would like to take this opportunity to highlight the growing concern within the construction industry about how the retentions regime will operate from 31 March 2017. The Act was passed in 2015 and we have been expecting regulations to be passed that would provide further clarity and practical guidance on a number of issues. We are now four months out from the new regime and there are still many questions to be answered.

We have raised our concerns with Ministers, Officials and in our submissions on the MBIE discussion paper on retentions in May 2016.

We understand that recently a further study around the practical implementation of the regime has been undertaken by one of our multi-national accounting companies however this report has not been shared with the industry.

There has been no engagement with CCNZ regarding the proposed regulations since we made our submissions to the MBIE discussion paper in May 2016.

The major areas where clarity is required are

- What is the ‘de-minimus’ amount as described in clause 18b of the Construction Contracts Amendment Act 2015.
- What is included in the definition of “liquid assets” in particular are upstream retentions able to be treated as liquid assets
- What types of accounting mechanisms and processes will meet the requirements of Clause 18d of the Construction Contracts Amendment Act 2015

ABOUT THE SUBMITTER

Civil Contractors New Zealand Inc is the national industry body representing civil and general contractors who carry out the country's civil infrastructure construction and maintenance work. We estimate that the civil construction sector carries out more than \$12 billion of work annually and employs in excess of 60,000 workers.

Our members undertake a wide spectrum of work including construction and maintenance of;

Transport networks	including roading, bridges, tunnels, railways, airports and ports
Water infrastructure	including water storage and reticulation, irrigation, drainage, waste and storm water services
Communications Networks	including underground and above ground networks
Disaster relief and protection	Flood and coastal protection and emergency response
Energy Infrastructure	including both generation and distribution;
Commercial and Residential Building	including site access, site works, foundations, car parks and installation of services;
Agriculture and Forestry work	including dairy conversions, tracks, drainage, effluent ponds, feed pads, building site preparation and forestry tracks and skid sites
Ground Stabilisation	including slips, subsidence and rock falls
Parks and sports fields	Construction and maintenance including vegetation control

Civil Contractors New Zealand was formed in 2014 following the merger of New Zealand Contractors' Federation and Roding New Zealand. Our primary roles are

1. Industry advocacy and representation
2. Supporting industry development, professionalism and safety
3. Providing information and advice