

New South Wales Government takes aim at subcontractor retention monies and announces SOPA overhaul

December 8, 2014 | Written by David McElveney, Paul Morgan and Luke Duggan

On 8 December 2014, the New South Wales Government announced the implementation of a long-foreshadowed retention trust scheme for the holding of subcontractor retention monies. There is also to be a comprehensive overhaul of the state's Security of Payment legislation.



The New South Wales Fair Trading Minister has announced that, after a lengthy period in limbo, a trust scheme for retention money in relation to subcontractors is now to be implemented. Head contractors should beware given the proposed AUD 22,000 fines for non-compliance.

Not only has the NSW Government announced the "ground-breaking" creation of a cash retention trust scheme for "the protection of subcontractors", but we have also been told to expect in 2015 a full review of the *Building and Construction Industry Security of Payment Act 1999 (SOPA)*.

NSW readers will be familiar with the suite of reforms to SOPA that have been mooted in the last year or so

following the publication of the report from the Collins Inquiry, some of which have now made it into law (see Clyde & Co articles: [A matter of trust – SOPA NSW changes regarding retention money](#) and [A tale of two subbies: dramatic changes to security of payment – Part 1](#)).

Key messages from the New South Wales Fair Trading Minister's announcement yesterday include:

- initially, the retention money scheme only will apply to head contractors and their direct subcontractors for projects of more than AUD 20 million;
- head contractors will be required to deposit subcontractors' retention money into approved accounts with authorised deposit-taking institutions;
- NSW Fair Trading (rather than the Office of the Small Business Commissioner, as previously envisaged) will check annual audit reports as a compliance mechanism to ensure that head contractors retain the money in approved trust accounts ; and
- fines of up to AUD 22,000 apply for failure to comply.

The announcement of a New South Wales SOPA review comes hot on the heels of an extensive overhaul in Queensland (see Clyde & Co article: [A tale of two subbies: dramatic changes to security of payment – Part 2](#)). It now seems likely that subcontractors in New South Wales will receive even further protection compared to their Queensland counterparts.

NSW Fair Trading has released a draft regulation and impact statement for public consultation, which closes on 8 January 2015.

The NSW Government is also considering whether to impose personal liability on company directors for failure to comply with the scheme, but more is expected to come to light during the statutory review of SOPA next year.

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