

retention.

It has been suggested that the *Act* might be extended to cover such alternate forms of security with the consequence that the court will have power to make any orders as appear necessary in relation to that security.

The extension of the *Act* in this manner would give rise to procedural difficulties as non-cash forms of security do not lend themselves well to being the subject to a charge. This would lead to a proliferation of court applications and security providers would have to be parties to those applications.

The nature of non-cash retentions would be changed and financial institutions may be less willing to provide them, especially if the result may be that they become

necessary parties to disputes between employers, head contractors and subcontractors.

Review of Forms

A number of new forms will result from amendments to the *Act*. A general review of forms will be undertaken when the amendments have been made.

Outcome of Review

The State Government is still considering submissions and draft legislation is yet to be released.

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Security of Payment

Queensland Subcontractor’s Charges Act - More of a Problem for Principals

- Robert Backstrom, Deacons Graham & James, Solicitors, Brisbane.

The *Subcontractor’s Charges Act* (introduced in 1974) was designed to allow unpaid subcontractors to claim a charge on moneys payable by the principal to the head contractor to ensure that they would eventually be paid. Once a notice of claim of charge is given, the principal must retain moneys otherwise payable to the head contractor or risk paying the subcontractor directly if the charge is found to be valid and the money had not been retained.

An important factor in creating a valid charge is the requirement to comply with section 15 of the *Act* by commencing an action to enforce the charged debt within 2 or 4 months of giving the notice depending on the type of debt being claimed.

Section 15(3) of the *Act* says that unless the 2 months or 4 month period is complied with the charge will be “deemed to be extinguished”. It has, therefore, been the practice in Queensland for principals who have been given such notices to wait until the time had expired and, if no court proceedings have been commenced, disregard the notice and pay the money to the head contractor.

This is now not a safe course of action.

Now, by joining into an existing action that has been properly commenced within time by another subcontractor an otherwise out of time subcontractor can resurrect his charge even if (because of the lapse of time) he could not have commenced his own action. That means that it is not

possible for a principal to be sure that a subcontractor’s charge has been extinguished until the time for all subcontractors to commence an action in respect of a charge has passed or any action that has been commenced has been heard.

It would therefore be wise for anyone employing subcontractors in Queensland to get legal advice in respect of all notices of charge lodged on the project prior to making final payments otherwise due under the contract.

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