

**MES Update September 2011**

## The Date to Celebrate In Our State !

Security of Payment Legislation 2009, after so many years of:

- Very considerable and unwarranted losses
- Procrastination of approved progress payments to suppliers, sub contractors and consultants
- Withholding of retention monies when there is no reason
- Back charging by builders and clients against the contract of engagement
- The freeing up of our progress payments on time

Following our input to our recent discussion paper on the proposed regulations and administrative arrangements for the *Building and Construction Industry Security of Payment Act 2009*, a meeting was held at the offices of the OCBA. This meeting was convened to allow an opportunity to consider all submissions and recommendations that have been made to the Minister.

- **At this meeting it was confirmed that the commencement date of the Act will be Saturday 10<sup>th</sup> December 2011.**

### The outcomes of the recent meeting with the OCBA:

1. Sub contractors, supplier and professionals, do not and it is absolutely unnecessary to add the clause to your offers, you can if you wish.  
Example: This quotation includes the payments provisions as per the Security of Payment Legislation 2009.
2. Every contract signed after midnight December 9<sup>th</sup> 2011 must have your conditions of payment very clearly and precisely stated
3. The Government will not place a cap amount to the maximum claim amount
4. We welcomed the following advise with the appointment of the Commissioner Mr Paul White for the Consumer Affairs Commission, who will preside over Security of Payments Legislation 2009
5. Project Manager Mr David Mitchell for Security of Payment Legislation 2009
6. The legislation will all but mirror the NSW Security of Payment legislation.  
They only have 10 days to prepare and respond to a claim where as in South Australia's Security of Payment legislation we will be given 15 days.  
The Minister has added reference adjudication bias, the Code of Conduct and Procedural Fairness to the legislation.

We would like to record our appreciation to Mr Graham Close for the contribution and presentation.

- Contractual Matters
- Performance and Compliance
- Case Proceedings

## Commentary in Reflection

If we had this legislation back many years my family would be in excess of \$2,500,000 better off in approved progress claims payments and does not count all the other add-on's that we lost out in.

We go back to late Mr Henry Willkins, Life Members of MBA. Mr Brian Grove, Life Member of MBA, who advised myself 'so sorry Bruce, we are closing our business tonight, I want you to leave everything onsite now, just leave'. 'We are locking up' and then followed at least another 40 companies, right up to recent.

- Alpine Construction Pty Ltd recent collapse – plus \$20 million owing at the creditors meeting held recently

30 years ago I worked for the late Mr Hamra, Mayor of West Torrens – his company owing millions of dollars to including:

- Sub contractors
- Suppliers
- Professionals
- Government departments
- Semi Government departments

MES Pty Ltd was contacted by a number of companies in reference to progress payments getting slower and slower and now to 50%. Our recommendations were not acceptable at the time, however it is with regret that I note on the creditors listing those companies have doubled their exposure with funds owed by that builder. Their accounts have certainly not reduced, such a terrible time just prior to Christmas and in this tight economic climate.

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Bruce A HARRIS M.I.P.A. A.I.R.A.H. F.A.I.C.D. A.I.P.M

Management & Enterprising Solutions Pty Ltd



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