



## Construction Contracts Amendment Act 2015

### Changes relating to adjudication and enforcement

The Construction Contracts Act 2002 regulates payment provisions in construction contracts, provides an adjudication framework for people with disputes under construction contracts and provides options for recovering non-payment under construction contracts.

The Construction Contracts Amendment Act 2015 is the result of a comprehensive review of the Construction Contracts Act 2002. The amendments ensure the Act provides:

- a fair, balanced and appropriate payment regime
- access to fast and cost-effective dispute resolution
- cost-effective and timely enforcement of rights and obligations
- better certainty of payment of retention money held under construction contracts.

### Changes to when the Act applies

Generally, the Act applies to contracts for 'construction work'.

The definition of 'construction work' has been amended to include design, engineering and quantity surveying work (collectively this work is called '*related services*'). This means parties to a contract for this type of work will have access to the default payment provisions in the Act and, if disputes arise, the adjudication process.

The expanded definition of 'construction work' will come into force on 1 September 2016. This means the change does not affect contracts entered into or renewed before 1 September 2016.

#### Additional situations **where the Act does not apply** have been added for

clarification, i.e. the Act does not apply to provisions in a construction contract:

- that are for the operation or management of a building, structure or any part of land and are not, or do not relate to, construction work
- where a party agrees to carry out construction work as a condition for the sale and purchase of second hand chattels, fixtures or fittings.

#### Definition change

The definition of '*construction site*' has been changed to include land where construction work is intended to be carried out, but has not yet started. This is to ensure that designers, engineers and quantity surveyors are not limited in their ability to use the Act if physical construction work has not yet begun.

## How the Act applies to residential and commercial construction contracts

The differences between how the Act applies to residential construction contracts and commercial construction contracts have been removed. Now parties to either type of contract have full and equal access to the default payment provisions and adjudication processes under the Act. The only exception is in relation to charging orders. It is still not possible to seek charging orders against any owner who is a residential occupier of the construction site, including situations where the owner is a family trust.

### Important

Parts of the Act have been reordered and renumbered to make it easier to navigate. For example, sections 52 to 55 (relating to review of adjudicators' determinations) have been moved and renumbered 71A to 71D.

Payments under construction contracts are usually made in instalments referred to as 'progress payments'. The Act now makes it clear that parties are also free to agree on a single payment instead of several instalments.

All payment claims now need to be accompanied by a prescribed form that outlines the processes for responding to the payment claim and explains the consequences of not responding to, or paying, a claimed or scheduled amount. Previously this information only had to accompany payment claims served on residential occupiers.

### Definitions

- *The definition of 'claimed amount'* has been reworked to make it clear a payment claim can specify any payment amount the payee believes to be due under the contract.
- Additionally, a new definition for '*payment*' has been inserted to make it clear that a payment means a progress payment for construction work or any other type of payment a party to a construction contract is entitled to, i.e.: a payment claim can specify amounts claimed for interest, retention money or other amounts due under the contract.



## Adjudication

When parties can refer disputes to adjudication has been better defined by providing clear examples, in the Act, of what constitutes a dispute between the parties to a construction contract.

All **notices of adjudication** must now be accompanied by a prescribed form that includes a statement of the respondent's rights and obligations and a brief explanation of the adjudication process. Previously this information only had to be provided with notices of adjudication served on residential occupiers.

The Act now requires a minimum of two working days between the service of the **notice of adjudication** and selection of an adjudicator in instances where a claimant requests an **authorised nominating authority** to select the adjudicator. This is to allow respondents time to understand their rights and obligations under the adjudication process before the adjudication timeframes begin.

The **notice of acceptance** must now be in a prescribed form. Adjudicators serve a notice of acceptance on the parties when they accept an appointment to act as an adjudicator to a dispute. The prescribed **notice of acceptance** will specify details about the appointment and must include confirmation that the adjudicator meets the eligibility criteria set out in the Act. Regulations will set out further details that must be included in the form.

Claimants now have a right of reply to a response to an adjudication claim within five working days. When a respondent receives a notice of adjudication, they can serve a written response to the adjudicator (and every other party to the adjudication). The claimant now has the right to serve a written reply to that response on the adjudicator (and all other parties). Adjudicators may choose to ignore any new issues material raised in the reply, and can also allow the respondent an additional response (called a rejoinder) within two working days.

## Enforcement

Adjudicators' determinations about rights and obligations under a construction contract are now enforceable in the same way as determinations for payments of money, i.e. through entry as a judgment in the District Court.

A plaintiff can only apply to have the determination entered as a judgment, if the conditions imposed by the adjudicator have been met and after any date the adjudicator has specified.

The limitation period for referring a dispute to adjudication is clearer. The same limitation period of up to ten years specified in the Building Act 2004, in relation to building work, applies to adjudications under the Construction Contracts Act.

The time a defendant has to oppose an adjudication determination being entered as a judgment has been reduced from 15 to five working days. Additional grounds for opposing entry as a judgment have been added.

The period after which the court must enter the determination as a judgment if the defendant takes no steps to oppose it has been shortened from 15 to five working days.

## Other changes to the Act

### *Service of notices*

It is now clear that servicing a notice in the prescribed manner means prescribed by regulations, not prescribed within a contract.

### *Additional powers for MBIE*

The Chief Executive of the Ministry of Business, Innovation and Employment will be able to collect information on adjudications for statistical or research purposes

## What changes are being made to the Construction Contracts Regulations 2003?

The Construction Contracts Regulations 2003 are being amended to rewrite forms into plain English and introduce one new form – an adjudicator's **notice of acceptance**. These regulations are currently being made and more information will be made available on the Ministry's website in coming weeks.

## When do these new laws apply?

There are three key dates these changes take effect.

- From **1 December 2015** residential and commercial construction are to be treated the same under the Act, with the exception of charging orders. This gives parties to residential contracts full equal access to the Act's dispute resolution and payment regimes. Contractors will not be able to obtain charging orders against residential occupiers. You can read more about these changes [here](#).
- From **1 September 2016** design, engineering and quantity surveying work are included under the scope of the Act. This gives parties to construction contracts for these types of design work full access to the Act's dispute resolution and payment regimes.
- From **31 March 2017** retention money withheld under commercial construction contracts must be held on trust. You can read more about retentions [here](#).