

Construction Contracts Amendment Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Construction Contracts Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to amend the Construction Contracts Act 2002 (the Act), which prescribes default progress payment arrangements and provides a dispute resolution process (adjudication) as a lower-cost alternative to the courts. The principal amendments proposed in the bill would

- remove most of the distinctions between the treatment of residential and commercial contracts under the Act
- extend the scope of the Act to apply to contracts for design, engineering, and quantity surveying work
- remove the distinction between enforcement of payment determinations and of those relating to rights and obligations
- make the enforcement process more efficient.

Our commentary covers the key amendments we recommend to the bill. It does not cover minor or technical amendments.

Provisions relating to adjudication

Whilst adjudication provides an effective means of resolving disputes in the sector, we acknowledge that the tight timeframes set out in the Act could create opportunities for “ambush claims”. Currently, claimants can set adjudication in motion within one working day and the respondent is required to reply within five. Residential owners and smaller contractors are particularly vulnerable to “ambush” as they are not likely to be familiar with the adjudication provisions of the Act. Our recommendations relating to adjudication are set out below.

Selection of adjudicator

We recommend adding new clause 13A changing the timeframe for selecting an adjudicator to two to five working days after the notice of adjudication has been served where the parties cannot agree on the appointment. We consider that the resultant pause in the process would limit the ability of a claimant to rush adjudication for tactical reasons.

Notice of acceptance

We recommend adding new clause 14A to require the information in a notice of acceptance to be prescribed by regulations. We expect the regulations will require that the following information be included in the notice:

- a statement that the adjudicator has accepted the appointment
- if the adjudicator has been appointed through a nominating body, a statement that this is because the parties were unable to agree on who to appoint
- confirmation the adjudicator meets the eligibility criteria under section 34 of the Act
- all timeframes for adjudication clearly set out and a statement as to which of them have already commenced
- an indication of which timeframes the respondent can ask the adjudicator to extend if necessary

- an estimated cost of the adjudication process
- a statement that the parties have alternative options for seeking redress (including mediation and the courts), if they do not wish to continue the adjudication process.

Currently the content of the notice of acceptance, which commences the adjudication process, is not prescribed. We believe prescribing the information it must convey is the best way to ensure consistency and ensure parties are aware of the process.

Pre-adjudication conference

We recommend deleting clause 15. As introduced, the bill proposes mandatory pre-adjudication conferences. We believe this would add cost and delay adjudication. The Act already allows adjudicators to hold conferences, and making them mandatory is unnecessary. We believe prescribed forms would be a more effective way of informing parties of their rights and the standard procedures involved in adjudication.

Response to an adjudication claim

We recommend inserting new subclause 16(2), which requires an adjudicator to allow a respondent additional time if the adjudicator believes the claim has been served with “undue haste” and the “respondent has had insufficient time” to prepare a response. This amendment would further reduce the opportunity for “ambush” by claimants. We also believe it would allow sufficient time to consider more complex claims relating to design, engineering, and quantity surveying work.

We recommend a further amendment to subclause 16(2) to make it clear a respondent to a claim could seek a time extension from the appointed adjudicator only before the end of the designated response period.

Right of reply

We recommend inserting new clause 16A in the bill to allow claimants a right of reply to an adjudication response. Adjudicators would be free to ignore replies that raise new issues or material, and would be able to allow respondents a further reply.

Adjudicator's determination form

We recommend amending clause 18 to require that an adjudicator's determination be dated.

Enforcement of adjudicator's determination

We recommend amending subclause 28(3) to remove the distinction between payment and other types of determinations. We consider this amendment reflects a key purpose of the bill.

Defendant may oppose entry as judgment

We recommend amending subclause 29(2) to introduce a change of circumstances that makes compliance impossible as an additional ground for opposing an adjudicator's determination being entered as a judgment in the District Court. Adjudicators' determinations are not directly enforceable; they must first be entered as a judgment in the District Court.

Meaning of construction work

In the bill as introduced, clause 6 extends the definition of construction work to include design, engineering, and quantity surveying activities. We recommend amending this clause to add operations that are critical for the completion of, or preparatory to, the scope of design, engineering, and quantity surveying work. These "related services" directly affect the quality of building work, and it would benefit consumers if they were covered by the legislation.

We did not agree with the contention that extending the meaning of construction work would unfairly open up to adjudication persons who were not party to a construction contract. Under the Act any dispute that requires adjudication would be between the parties to the construction contract.

Interpretation

We recommend amending the definition of "construction site" in clause 5 of the bill as it relates to "related services" to include land where work is planned but has not yet begun. This amendment would apply to land and premises that were subject to the contract.

We consider this is necessary to ensure that design, engineering, and quantity surveying work is covered under the Act.

Commencement

We recommend amending the commencement date of the legislation in clause 2 to 1 November 2014.

We recommend inserting new subclause 7(3) and new clause 32 to insert a new schedule, which makes it clear that the amendments proposed in the bill would apply only to contracts entered into, or renewed, on or after the commencement date.

We recommend amending subclause 7(2) to stagger the commencement date for the Act as it would apply to “related services” to 1 November 2015. We believe this would allow enough time for designers, engineers, and quantity surveyors to be informed about, and adapt to, the reforms in the legislation.

When the Act does not apply

We recommend inserting new clause 8A to exclude contract provisions for the sale and purchase of second-hand assets, and property management (where they are part of a contract that includes construction work) from the Act. We consider that only the design and construction phases of contracts are intended to be covered under this legislation.

Progress payments

We recommend inserting new clause 8B to delete the term “progress” from the payment provisions. This amendment would allow parties to agree to a single payment on completion of work. This is particularly relevant to small construction works that are completed within a few weeks. We believe this amendment is desirable to make it clear that contracting parties are free to agree their own payment terms.

Payment claims

We recommend inserting new clause 8C to modify section 19 of the Act. This clause would allow a “claimed amount” to include liquidated damages, breaches of implied warranties under the Building Act 2004, and construction work already carried out. We believe

this amendment would make certain that damages could be claimed if they were specifically agreed in a contract or implied by law.

Payment schedules

We recommend the addition of new clause 9A, replacing the word “indicate” with the word “state” in sections 20(2)(d) and 21(2)(c) of the Act. We consider that the amount of a claim should be specified exactly.

Service of notices

We recommend adding new clause 30A, to make it clear that “prescribed” in section 80 of the Act means “prescribed by regulations.” We believe this would prevent the misapprehension that it meant terms prescribed by the contract.

Other matters

We gave careful consideration to a number of other matters which did not result in amendments to the bill. Our comments relating to these matters are set out below.

Retentions

We are aware of growing concern in the sector relating to retentions. Retentions are a portion of the contract price which is withheld by a developer, or head contractor, until the work is completed, and found to be free of defects, when the retention is paid to the subcontractor. We were concerned to hear that many head contractors may be misusing retentions as working capital, delaying payment, or holding retention amounts disproportionate to the contract prices. This behaviour undermines the sector’s growth and productivity. While it is outside the scope of this bill we are encouraged to hear the Ministry of Business, Innovation and Employment is giving priority to addressing these issues. We urge the ministry to continue to work with industry players and look forward to policy solutions in legislation in early 2014.

Labour members noted that the Minister has changed his position from one of stating that there was no issue around security of payment and retentions to one of now actively exploring remedies around

these two key issues. Labour members would urge the Minister to expedite the formulation of proposals around retentions and security of payment to provide the industry with a resolution to these long-standing problems. Labour members also note that there is no obstacle to the Minister putting forward a supplementary order paper to this legislation with a set of remedies encapsulated in it.

Security of payment

We considered issues relating to security of payment, involving the party commissioning construction work setting aside the contract price. We believe that security of payment mechanisms in the sector are mostly effective, and the Act provides remedies for non-payment. We consider that changes proposed in this bill should improve access to redress in such an event.

Charging orders

A charging order is a court order registered against a land title that prevents its sale until the basis for the order is satisfied. Under the Act, charging orders can be obtained only for non-payment of commercial construction contracts. We considered suggestions that charging orders should also be available for residential contracts. However, we consider that the distinction between residential and commercial contracts should be maintained. There is a risk that a charging order registered against a residential property could cause a mortgage default, which would not benefit either party.

Ability to claim interest

We considered whether the bill should allow interest claims for late payments, unpaid amounts, and payments awarded through adjudication. Currently, interest claims are precluded only when interest is not mentioned in the contract; where a contract provides for interest, it can be claimed in a payment claim or awarded in an adjudication determination. We were not persuaded that further regulation is required.

Appendix

Committee process

The Construction Contracts Amendment Bill was referred to the committee on 11 June 2013. The closing date for submissions was 25 July 2013. We received and considered 31 submissions from interested groups and individuals. We heard 22 submissions.

We received advice from the Ministry of Business, Innovation and Employment.

Committee membership

Jonathan Young (Chairperson)

Kanwaljit Singh Bakshi

Hon Clayton Cosgrove

Clare Curran

Kris Faafoi

Julie Anne Genter

Peseta Sam Lotu-Iiga

Mark Mitchell

Dr Jian Yang

Construction Contracts Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Maurice Williamson

Construction Contracts Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Construction Contracts Amendment Act **2013**.
- 2 Commencement**
This Act comes into force on **1 November ~~2013~~ 2014**.

5

3 **Principal Act**

This Act amends the Construction Contracts Act 2002 (the **principal Act**).

Part 1

Amendments to preliminary provisions 5

4 **Section 4 amended (Overview)**

Replace section 4(f) to (h) with:

- “(f) provisions granting a party to a construction contract who is owed money a statutory right to suspend work until payment is made are set out in **section 24A**: 10
- “(g) provisions relating to the adjudication of disputes are set out in Part 3:
- “(h) provisions enabling an adjudicator’s determination to be reviewed or enforced are set out in Part 4:”.

5 **Section 5 amended (Interpretation)** 15

- (1) In section 5, repeal the definitions of **commercial construction contract**, **residential construction contract**, and **residential occupier**.
- (2) In section 5, definition of **construction contract**, replace paragraph (a) with: 20
 - “(a) means a contract for carrying out construction work; and”.
- (2A) In section 5, replace the definition of **construction site** with:
 - “**construction site** means—
 - “(a) the land on which the claimant has been carrying out construction work under the relevant construction contract: 25
 - “(b) in relation to related services, means the land or premises that are the subject of the contract”.
- (3) In section 5, replace the definition of **defendant** with: 30
 - “**defendant** means a party—
 - “(a) against whom an adjudication determination is made; and
 - “(b) against whom enforcement of the determination is sought”. 35

- (4) In section 5, replace the definitions of **plaintiff** and **progress payment** with:
- “**plaintiff** means a party—
- “(a) in whose favour an adjudication determination is made; and 5
- “(b) who seeks enforcement of the determination
- “**progress payment**—
- “(a) means a payment for construction work carried out under a construction contract that is in the nature of an instalment (whether or not of equal value) of the contract price for the contract; and 10
- “(b) includes any final payment under the contract; but
- “(c) does not include an amount that is, or is in the nature of, a deposit under the contract”.
- (5) In section 5, definition of **working day**, replace paragraph (c) 15 with:
- “(c) for the purposes of sections 18, 22, **24A**, 33, 35 to 37, 46, 47, 59, and 66, a day in the period commencing on 24 December in any year and ending with the close of 5 January in the following year; and” 20
- (6) In section 5, definition of **working day**, paragraph (d), replace “53” with “**71B**”.
- (7) In section 5, insert in their appropriate alphabetical order:
- “**chief executive** means the chief executive of the department responsible for the administration of this Act 25
- “**premises**, in relation to related services, includes intended premises
- “**related services** means construction work of the kind referred to in **section 6(1A)**”.
- 6 Section 6 amended (Meaning of construction work) 30**
- After section 6(1), insert:
- “(1A) **Construction work** includes—
- “(a) design or engineering work carried out in New Zealand in respect of work of the kind referred to in subsection (1)(a) to (d) and (f): 35

“(b) quantity surveying work carried out in New Zealand in respect of work of the kind referred to in subsection (1)(a) to (g).”

7 Section 9 amended (When Act applies: general)

(1) In section 9, after “Subject to”, insert “**subsection (2) subsections (2) and (3)** and”.

(2) In section 9, insert as subsection (2):

“(2) Despite subsection (1), this Act only applies to contracts for related services—

“(a) entered into on or after **1 November 2013 2015**; or 10

“(b) renewed on or after **4 November 2013**, but only in relation to obligations incurred or undertaken on or after that date.

“(b) renewed for a further term on or after **1 November 2015** (except that this Act has effect only in relation to obligations that are incurred or undertaken on or after that date). 15

“(3) The Schedule contains transitional provisions relating to amendments made to this Act on **1 November 2014**.”

8 Section 10 repealed (When Act applies: residential construction contracts) 20

Repeal section 10.

8A Section 11 amended (When Act does not apply)

(1) In section 11(b)(ii)(C), after “contract”, insert “:”.

(2) After section 11(b)(ii), insert: 25

“(iii) provisions under which a party undertakes to carry out construction work as a condition of an agreement for the sale and purchase of second-hand chattels, fixtures, or fittings; or

“(iv) provisions regarding property management.” 30

Part 2 Amendments to principal provisions

Payments

- 8B** Section 14 amended (Parties free to agree on progress payment provisions in construction contract) 5
- (1) In the heading to section 14, delete “progress”.
- (2) In section 14(a), delete “progress”.
- (3) In section 14, insert as subclause (2):
- “(2) To avoid doubt, the parties to a construction contract may expressly agree to a single payment under **subsection (1)(a)**.” 10
- 8C** Section 19 amended (Interpretation)
- In section 19, replace the definition of **claimed amount** with:
- “**claimed amount** means an amount, specified in a payment claim, that the payee claims to be due for—
- “(a) construction work carried out; or 15
- “(b) liquidated damages under the contract; or
- “(c) breach of a term implied into the contract under the Building Act 2004 or any other enactment”.
- 9** Section 20 amended (Payment claims)
- In section 20(3), replace “If a payment claim is served on a residential occupier, it” with “A payment claim”. 20
- 9A** Section 21 amended (Payment schedules)
- In section 21(2)(c), replace “indicate” with “state”.
- 10** New subpart 4 of Part 2 inserted
- After section 24, insert: 25
- “Subpart 4—Suspension of work
- “24A Suspension of construction work**
- “(1) A party who carries out construction work under a construction contract (**party A**) has the right to suspend work under that contract if— 30
- “(a) any of the following circumstances applies:
- “(i) a claimed amount is not paid in full by the due date for its payment, and no payment schedule

- has been provided by the party who it is claimed is liable for the payment (**party B**):
- “(ii) a scheduled amount is not paid in full by the due date for its payment even though a payment schedule given by party B indicates a scheduled amount that party B proposes to pay to party A: 5
 - “(iii) party B has not complied with an adjudicator’s determination that party B must pay an amount to party A by a particular date; and
 - “(b) party A has served on party B a notice under section 23(2)(b), 24(2)(b), or 59(2)(b), as the case may be; and 10
 - “(c) the amount mentioned in **paragraph (a)(i) or (ii)** is not paid, or the determination mentioned in **paragraph (a)(iii)** is not complied with, within 5 working days after the date of that notice. 15
- “(2) If party A exercises the right conferred by **subsection (1)**, party A—
- “(a) is not in breach of the construction contract; and
 - “(b) is not liable for any loss or damage suffered by party B, or by any person claiming through party B; and 20
 - “(c) is entitled to an extension of time to complete the contract, but is not entitled solely by reason of this Act to recover any costs incurred as a consequence of the extension of time; and
 - “(d) keeps party A’s rights under the contract, including any right to terminate the contract; and 25
 - “(e) may at any time lift the suspension, even if the amount has not been paid or the determination has not been complied with.
- “(3) To avoid doubt, **subsection (2)(c)** does not affect party A’s rights to recover (whether in an adjudication or otherwise) any costs incurred as a consequence of the extension of time that exist other than solely by reason of this Act, nor does it add anything to those rights. 30
- “(4) If party A exercises the right conferred by **subsection (1)**, the exercise of that right does not— 35
- “(a) affect any rights that would otherwise have been available to party A under the Contractual Remedies Act 1979; or

“(b) enable party B to exercise any rights that may otherwise have been available to party B under that Act as a direct consequence of party A exercising the right conferred by **subsection (1)**.

“(5) The right to suspend work under a construction contract ceases 5
when party B pays the amount in full or complies with the adjudicator’s determination.

“Compare: 2002 No 46 s 72”.

Adjudication of disputes

**11 Section 26 amended (Relationship between Part and other 10
dispute resolution procedures)**

In section 26(3), replace “However, an” with “An”.

12 Section 28 amended (How to initiate adjudication)

After section 28(2), insert:

“(3) A notice of adjudication must also set out prominently, in the 15
prescribed form (if any),—

“(a) a statement of the respondent’s rights and obligations in the adjudication; and

“(b) a brief explanation of the adjudication process.”

**13 Section 31 replaced (When claimant may not seek 20
approval for issue of charging order)**

Replace section 31 with:

**“31 When claimant may not seek approval for issue of 25
charging order**

“(1) A claimant may not seek any of the matters referred to in sec- 25
tion 29 or 30 against an owner who is—

“(a) an individual who is occupying, or intends to occupy, wholly or mainly as a dwellinghouse, the premises that are the subject of a construction contract:

“(b) a trustee of a family trust, where the premises that are 30
the subject of a construction contract are—

“(i) owned by the trust; and

“(ii) occupied, or intended to be occupied, wholly or mainly as a dwellinghouse, by any beneficiary of the trust. 35

“(2) In **subsection (1), family trust** means a trust that is established primarily to benefit a natural person for whom the settlor has natural love and affection.

“**31A Compliance with requirements of Act relating to supply of certain information** 5

“(1) No notice of adjudication is invalid for any failure to comply strictly with the requirements of section 28(2)(a) to (d) and (g) as long as—

“(a) the notice is in writing; and

“(b) the nature of the dispute and the names of the parties involved are stated in the notice; and 10

“(c) any non-compliance does not mislead or unjustly affect the interests of the recipient.

“(2) If a notice of adjudication fails, in accordance with section 28(2)(e) or (f), to state whether a charging order is being sought, approval for the issue of a charging order may not be given. 15

“(3) A notice of adjudication that fails to comply with **section 28(3)** has no effect and—

“(a) this Part applies as if no notice of adjudication had been served; and 20

“(b) the claimant may serve on the respondent a new notice of adjudication that complies with **section 28(3)**.

“(4) If a party to an adjudication wishes to provide another party or the adjudicator with copies of, or extracts from, the construction contract but is for any reason unable to do so (for example, in a case where the contract is oral), that party may provide the missing information in the form of a statutory declaration together with any supporting documents that are available. 25

“Compare: 2002 No 46 s 64”. 30

13A Section 33 amended (Selection of adjudicator)

Replace section 33(2)(b) with:

“(b) for the purposes of subsection (1)(c), 5 working days after the notice of adjudication has been served or any further period that the parties may agree; and 35

“(c) for the purposes of subsection (1)(d), 2 to 5 working days after the notice of adjudication has been served or any further period that the parties may agree.”

14 Section 35 amended (Appointment of adjudicator)

- (1) In section 35(2), after “notice of acceptance”, insert “(a **notice of acceptance**)”. 5
- (2) Repeal section 35(4) and (5).
- (3) In section 35(6), replace “that confirms the person meets the eligibility criteria for adjudicators under section 34” with “that complies with **section 35A**”. 10

14A New section 35A inserted (Notice of acceptance)

After section 35, insert:

“35A Notice of acceptance

- “(1) A notice of acceptance must be in the form (if any) prescribed in regulations made under this Act. 15
- “(2) A notice of acceptance that fails to confirm that the adjudicator meets the eligibility criteria for adjudicators under section 34 has no effect.”

15 New section 36A inserted (Pre-adjudication conference)

After section 36, insert:

“36A Pre-adjudication conference

- “(1) An adjudicator must make arrangements for a pre-adjudication conference to be held within 2 working days after serving the notice of acceptance on the parties. 20
- “(2) The purpose of the pre-adjudication conference is for the adjudicator to answer the parties’ questions about the adjudication process. 25
- “(3) A pre-adjudication conference does not need to be held if each party consents to the pre-adjudication conference not being held.” 30

16 Section 37 amended (Response to adjudication claim)

- (1) Replace section 37(1) with:

- “(1) A respondent may serve ~~on the adjudicator~~ a written response to the adjudication claim on the adjudicator—
- “(a) within 5 working days after receiving that claim or the adjudicator’s notice of acceptance (whichever is the later); or 5
- “(b) within any further time that the parties to the adjudication agree; or
- “(c) within any further time that the adjudicator allows.”
- (2) After section 37(3), insert:
- “(4AA) **Subsection (4)** applies if, before the end of the period referred to in **subsection (1)(a)**, the respondent requests additional time to serve a written response. 10
- “(4) For the purpose of **subsection (1)(c)**, an adjudicator—
- “(a) must allow the respondent additional time to serve a written response if the adjudicator considers it necessary ~~to complete the response, having regard to the size or complexity of the claim:—~~ 15
- “(i) having regard to the size or complexity of the claim; or
- “(ii) because, in the adjudicator’s opinion, the claim has been served with undue haste and, as a result, the respondent has had insufficient time to prepare his or her response: 20
- “(b) may allow the respondent additional time to serve a written response if the adjudicator considers that additional time is reasonably required for any reason.” 25

16A New section 37A inserted (Reply to response to adjudication claim)

After section 37, insert:

- “37A Reply to response to adjudication claim** 30
- “(1) A claimant may serve on the adjudicator a written reply to the response under **section 37(1)**.
- “(2) The claimant’s written reply must be served within 5 working days after a copy of the response is served on the claimant under section 37(3). 35
- “(3) The claimant must serve a copy of the reply and any accompanying documents on the respondent and every other party

to the adjudication either before or immediately after they are served on the adjudicator.

“(4) An adjudicator who receives a claimant’s written reply under **subsection (1)** may—

“(a) refuse to consider any new material or issues raised in the reply: 5

“(b) allow the respondent up to 2 working days to serve a rejoinder to the claimant’s reply.”

17 New sections 38A and 38B inserted

After section 38, insert:

10

“38A Special provisions for adjudication if approval for charging order sought by claimant

An adjudication in which the claimant seeks approval for the issue of a charging order in respect of a construction site must be conducted by an adjudicator who—

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“(a) is nominated for the purpose by an authorised nominating authority; and

“(b) has the specific additional qualifications, expertise, and experience that may be prescribed for the purposes of this section (if any).

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“Compare: 2002 No 46 s 63

“38B Parties may be represented at adjudication proceedings

“(1) Any party to a dispute that has been referred to adjudication may be represented by the representatives (whether legally qualified or not) that the party considers appropriate.

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“(2) **Subsection (1)** is subject to the adjudicator’s power to direct that the number of representatives present at a conference of the parties is to be limited to allow for the efficient conduct of proceedings.

“Compare: 2002 No 46 s 67”.

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18 Section 47 amended (Adjudicator’s determination: form)

(1AA) After section 47(1)(b)(i), insert:

“(ia) must be dated; and”.

- (1) In section 47(1)(b)(iii), delete “in a case where the adjudicator determines that a party to the adjudication is liable to make a payment.”.
- 19 Sections 52 to 55 repealed** 5
Repeal sections 52 to 55.
- 20 Section 58 amended (Enforceability of adjudicator’s determination)**
- (1) In section 58(2), replace “is not enforceable” with “is enforceable in accordance with **section 59A**”.
- (2) Repeal section 58(3). 10
- 21 New section 59A inserted (Consequence of not complying with adjudicator’s determination under section 48(1)(b) or (2))**
- After section 59, insert:
- “59A Consequence of not complying with adjudicator’s determination under section 48(1)(b) or (2)** 15
- “(1) This section applies if a party against whom an adjudication determination is made fails to comply with the adjudicator’s determination in respect of rights and obligations under the contract. 20
- “(2) The party in whose favour the determination was made may apply for the determination to be enforced by entry as a judgment in accordance with sections 73 to 78 (but only after such date, if any, specified in the adjudicator’s determination for compliance).” 25
- 22 Section 60 amended (Effect of review or other proceeding on adjudicator’s determination under section 48(1)(a))**
- In section 60 and the heading to section 60, delete “under section 48(1)(a)”.
- 23 Section 61 repealed (Consequence of not complying with adjudicator’s determination under section 48(1)(b) or (2))** 30
Repeal section 61.

- 24 Sections 62 to 64 and 67 repealed**
Repeal sections 62 to 64 and 67.
- Review and enforcement of adjudicator's determination*
- 25 Part 4 heading replaced** 5
Replace the Part 4 heading with:
**“Part 4
“Review and enforcement of adjudicator's determination”.**
- 26 New subpart 1AA of Part 4 inserted** 10
After the Part 4 heading, insert:
“Subpart 1AA—Review of adjudicator's determination
“Review of adjudicator's determination in respect of owner who is not respondent 15
- “71A Owner who is not respondent may apply to District Court for review of adjudicator's determination**
- “(1) An owner who is not a respondent may apply to a District Court for a review of—
- “(a) an adjudicator's determination that the owner is jointly and severally liable with the respondent to make a payment to the claimant; and 20
- “(b) an adjudicator's approval for the issue of a charging order in respect of the construction site.
- “(2) A District Court has the jurisdiction to hear and determine an application for review under this section despite any limits imposed on District Courts in their ordinary civil jurisdiction by sections 29 to 34 of the District Courts Act 1947. 25
“Compare: 2002 No 46 s 52
- “71B Procedure for seeking review** 30
- “(1) An application for review under **section 71A** must be made by filing a notice, in the prescribed form (if any), in the District Court nearest to the place at which the adjudication proceedings to which the application for review relates were held.

- “(2) The notice must be filed—
- “(a) within 20 working days after the date of the determination to which the application for review relates; or
 - “(b) within any further time that the District Court may allow on application made before or after the expiration of the period referred to in **paragraph (a)**. 5
- “Compare: 2002 No 46 s 53
- “**71C Powers of District Court on review**
- “(1) For the purpose of hearing the application for review, the District Court— 10
- “(a) must conduct the review as a hearing *de novo* of the relevant dispute; and
 - “(b) has all the powers, duties, functions, and discretions of the adjudicator in making the determination to which the application for review relates; and 15
 - “(c) has all the powers vested in a District Court in its civil jurisdiction.
- “(2) On hearing the application for review, the District Court may—
- “(a) quash the determination, and substitute for it any other determination that the adjudicator could have made in respect of the original proceedings; or 20
 - “(b) refuse the application.
- “(3) A District Court’s determination under **subsection (2)(a)**— 25
- “(a) has effect as if it were a determination made by an adjudicator for the purposes of this Act; and
 - “(b) is not a final determination of the dispute between the claimant and respondent to the adjudication under review.
- “(4) **Subsection (3)(b)** does not prevent any proceedings between the claimant and respondent to the adjudication under review from being heard and determined at the same time as the application for review under this section. 30
- “Compare: 2002 No 46 s 54

“71D Effect of review on adjudicator’s determination

An application for review under **section 71A** does not operate as a stay of the adjudicator’s determination unless a District Court Judge, on application, so determines.

“Compare: 2002 No 46 s 55”.

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27 Subpart 1 of Part 4 repealed

Repeal subpart 1 of Part 4.

28 Section 73 amended (Enforcement of adjudicator’s determination)

(1) Repeal section 73(1).

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(2) Replace section 73(2) with:

“(2) A plaintiff may apply for an adjudicator’s determination to be enforced by entry as a judgment in accordance with this subpart.”

(3) Replace section 73(5) with:

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“(5) Despite **subsection (2)**, a plaintiff in whose favour a determination has been made may only apply for that determination to be enforced by entry as a judgment—

“(a) ~~in the case of an amount of money payable under the determination, if any conditions imposed by the adjudicator for payment have been met:~~

20

“(a) if any conditions imposed by the adjudicator have been met; and

“(b) ~~in the case of a determination regarding rights and obligations;~~ after the date (if any) specified in the adjudicator’s determination for compliance.”

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29 Section 74 amended (Defendant may oppose entry as judgment)

(1) In section 74(1), replace “15” with “5”.

(2) After section 74(2)(c), insert:

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“(d) that due to a change in circumstances, which was not caused in any part by the defendant, it is not possible to comply with the adjudicator’s determination:

“(de) that the date (if any) specified in the adjudicator’s determination for compliance has not (yet) passed.”

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30 Section 75 amended (Entry as judgment if defendant takes no steps)

In section 75, replace “15” with “5”.

Part 3

Amendments to miscellaneous provisions

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30A Section 80 amended (Service of notices)

In section 80(d), replace “in the prescribed manner (if any)” with “in the manner (if any) prescribed in regulations made under this Act”.

30B Section 82 amended (Regulations)

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In section 82, insert as **subsection (2)**:

“(2) Regulations prescribing the form of a notice of acceptance may require that the notice—

“(a) state that the adjudicator has accepted appointment as adjudicator:

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“(b) if the adjudicator has been appointed by a nominating body agreed between the parties, state that the nominating body has appointed the adjudicator because the parties could not or did not agree on an adjudicator:

“(c) if an authorised nominating authority has appointed the adjudicator, state that the authorised nominating authority has appointed the adjudicator because the parties could not or did not agree on an adjudicator:

20

“(d) confirm that the adjudicator meets the eligibility criteria for adjudicators under section 34:

25

“(e) set out all of the relevant time frames for the adjudication process:

“(f) identify which time frames have already commenced:

“(g) note which time frames the respondent can ask the adjudicator to extend:

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“(h) indicate the likely costs of the adjudication:

“(i) identify alternative options which may be available to the parties to resolve their dispute (other than by continuing the adjudication process).”

31 New section 83 inserted (Secretary may require adjudication information)

After section 82, insert:

“83 Secretary may require adjudication information

“(1) The chief executive may, for statistical or research purposes, 5
require adjudicators, nominating authorities, or nominating
bodies to provide any information (in their possession or under
their control) regarding adjudications, including, for example,
the number, nature, or outcome of adjudications initiated under
this Act. 10

“(2) A person must not disclose information under **subsection (1)**
except—

“(a) with the consent of the relevant party to the dispute and
any identifiable person to whom it relates; or

“(b) to the extent that the information is already in the public 15
domain; or

“(c) in statistical or summary form arranged in a manner that
prevents any information disclosed from being identi-
fied by any person as relating to any particular person;
or 20

“(d) if the information is to be used for statistical or research
purposes and will not be published in a form that could
reasonably be expected to identify any particular per-
son.”

32 New Schedule inserted (Transitional provisions relating to the 2014 amendments) 25

Insert the schedule set out in the schedule to this Act.

Schedule**s 32****New Schedule inserted****Schedule****s 7(3)****Transitional provision relating to the 2014 amendments****Transitional provision relating to 2014 amendments**

The amendments made to this Act by the Construction Contracts Amendment Act 2014 do not apply to a construction contract that was entered into before 1 November 2014 unless— 5

(a) the contract is renewed for a further term on or after

1 November 2014; or

(b) the parties agree that the amendments will apply. 10

Legislative history

29 January 2013
11 June 2013

Introduction (Bill 97-1)
First reading and referral to Commerce Committee
