

Reprint  
as at 21 April 2020



## Construction Contracts Act 2002

Public Act      2002 No 46  
Date of assent    26 November 2002  
Commencement    see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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### 1 Title

This Act is the Construction Contracts Act 2002.

### 2 Commencement

- (1) This Act comes into force on 1 April 2003, except for sections 65, 81, and 82.
- (2) Sections 65, 81, and 82 come into force on the day after the date on which this Act receives the Royal assent.

## Part 1 Preliminary provisions

### *Purpose*

### 3 Purpose

The purpose of this Act is to reform the law relating to construction contracts and, in particular,—

- (a) to facilitate regular and timely payments between the parties to a construction contract; and
- (b) to provide for the speedy resolution of disputes arising under a construction contract; and
- (c) to provide remedies for the recovery of payments under a construction contract.

### *Overview*

### 4 Overview

In this Act,—

- (a) preliminary matters (for example, the interpretation and application of the Act) are set out in sections 5 to 12:

- (b) provisions invalidating any contractual clause that makes payment to any party to a construction contract conditional on the payer first receiving payment from someone else are set out in section 13:
- (c) provisions confirming that parties are free to agree on a mechanism for determining payments are set out in section 14:
- (d) default provisions relating to payments are set out in sections 15 to 18:
- (da) provisions relating to retentions are set out in sections 18A to 18I:
- (e) provisions establishing a procedure that allows a party to a construction contract to recover a payment by making a payment claim, and the party who is liable for that payment to respond by means of a payment schedule, are set out in sections 19 to 24:
- (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:
- (g) provisions relating to the adjudication of disputes are set out in sections 25 to 71:
- (h) provisions enabling an adjudicator's determination to be reviewed or enforced are set out in sections 71A to 78:
- (i) miscellaneous matters (for example, the method of service of notices) are set out in sections 79 to 82.

Section 4(c): amended, on 1 December 2015, by section 4(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 4(d): replaced, on 1 December 2015, by section 4(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 4(da): inserted, on 31 March 2017, by section 4(3) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 4(e): amended, on 1 December 2015, by section 4(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 4(f): replaced, on 1 December 2015, by section 4(4) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 4(g): replaced, on 1 December 2015, by section 4(4) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 4(h): replaced, on 1 December 2015, by section 4(4) of the Construction Contracts Amendment Act 2015 (2015 No 92).

### *Interpretation*

## **5 Interpretation**

In this Act, unless the context otherwise requires,—

**adjudication** means an adjudication under this Act

**adjudicator** means an individual appointed in accordance with this Act to determine a dispute that has been referred to adjudication

**arbitral tribunal** has the meaning given it by section 2(1) of the Arbitration Act 1996

**associate** has the meaning set out in section 7

**authorised nominating authority** means a person authorised by the Minister under section 65 to nominate an adjudicator

**chief executive** means the chief executive of the department responsible for the administration of this Act

**civil proceedings** includes—

- (a) arbitral proceedings; and
- (b) for the purposes of sections 13 and 69, proceedings before an adjudicator under this Act

**claimant** means a party to a construction contract who refers a dispute to adjudication

**claimed amount** has the meaning set out in section 19

**commercial construction contract** means a contract for carrying out construction work in which none of the parties is a residential occupier of the premises that are the subject of the contract

**construction contract**—

- (a) means a contract for carrying out construction work; and
- (b) includes any variation to the construction contract; but
- (c) does not include a lease or licence under which a party undertakes to fit out, alter, repair, or reinstate the leased or licensed premises unless the principal purpose of the lease or licence is the carrying out of construction work

**construction site** means—

- (a) the land on which the claimant has been carrying out construction work under the relevant construction contract;
- (b) in relation to related services, the land or premises that are the subject of the contract

**construction work** or **work** has the meaning set out in section 6

**contract price**, in relation to a construction contract,—

- (a) means the total amount payable under the contract for carrying out the construction work to which the contract relates; and
- (b) includes, for the avoidance of doubt, any variations to that amount agreed to between the parties to the contract

**court** means—

- (a) the High Court; or



- (b) the District Court in any proceeding in which the amount claimed or in issue does not exceed the amount to which the jurisdiction of the District Court is limited in civil cases

**customised components**, in relation to a building or structure, means components that are specifically designed or modified for that particular building or structure

**defendant** means a party—

- (a) against whom an adjudication determination is made; and
- (b) against whom enforcement of the determination is sought

**dispute** means a dispute or difference that arises under a construction contract

**dwellinghouse**—

- (a) means any building that is occupied as a residence; and
- (b) includes any fence, gate, path, garage, shed, or other structure, amenity, or improvement that is an accessory to, and used wholly or mainly for the purposes of, the residence

**land** includes any estate or interest in land

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**nominating body** means a person (whether incorporated or not) who nominates adjudicators for the purposes of this Act

**notice of adjudication** means the notice referred to in section 28

**owner** means an owner of a construction site

**payee** has the meaning set out in section 19

**payer** has the meaning set out in section 19

**payment claim** is the claim referred to in section 20

**payment schedule** is the schedule referred to in section 21

**plaintiff** means a party—

- (a) in whose favour an adjudication determination is made; and
- (b) who seeks enforcement of the determination

**premises**, in relation to related services, includes intended premises

**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
- (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

**related services** means construction work of the kind referred to in section 6(1A)

**residential occupier** means an individual who is occupying, or intends to occupy, the premises that are the subject of a construction contract wholly or mainly as a dwellinghouse

**respondent** means a party to a construction contract against whom a claim is made in an adjudication

**scheduled amount** has the meaning set out in section 19

**tribunal** means—

- (a) an arbitral tribunal; or  
(b) the Disputes Tribunal established under section 4 of the Disputes Tribunal Act 1988

**working day** means a day of the week (irrespective of whether or not work is actually carried out on that day) other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, and Waitangi Day; and  
(ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and  
(b) the day observed in the appropriate area as the anniversary of the province of which the area forms a part; and  
(c) for the purposes of sections 18, 22, 24A, 33, 35 to 37A, 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  
(d) for the purposes of sections 71B, 74, and 75, a day in the period commencing on 25 December in any year and ending with the close of 15 January in the following year.

Section 5 **chief executive**: inserted, on 1 December 2015, by section 5(8) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 5 **construction contract** paragraph (a): replaced, on 1 December 2015, by section 5(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 5 **construction site**: replaced, on 1 December 2015, by section 5(3) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 5 **court** paragraph (b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 5 **defendant**: replaced, on 1 December 2015, by section 5(4) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 5 **plaintiff**: replaced, on 1 December 2015, by section 5(5) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 5 **premises**: inserted, on 1 December 2015, by section 5(8) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 5 **progress payment**: replaced, on 1 December 2015, by section 5(5) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 5 **related services**: inserted, on 1 December 2015, by section 5(8) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 5 **residential construction contract**: repealed, on 1 December 2015, by section 5(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 5 **tribunal** paragraph (b): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 5 **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Section 5 **working day** paragraph (c): replaced, on 1 December 2015, by section 5(6) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 5 **working day** paragraph (d): amended, on 1 December 2015, by section 5(7) of the Construction Contracts Amendment Act 2015 (2015 No 92).

## 6 Meaning of construction work

- (1) In this Act, unless the context otherwise requires, **construction work** means any of the following work:
- (a) the construction, erection, installation, carrying out, alteration, repair, restoration, renewal, maintenance, extension, demolition, removal, or dismantling of any building, erection, edifice, or structure forming, or to form, part of land (whether permanent or not and whether constructed wholly or partly on, above, or below ground level):
  - (b) the construction, erection, installation, carrying out, alteration, repair, restoration, renewal, maintenance, extension, demolition, removal, or dismantling of any works forming, or to form, part of land; including—
    - (i) any road, motorway, aircraft runway, wharf, docks, harbour works, railway, cableway, or tramway:
    - (ii) any canal, inland waterway, pipeline, reservoir, aqueduct, water main, well, or sewer:
    - (iii) any electricity, water, gas, or telephone reticulation:
    - (iv) any telecommunication apparatus or industrial plant:
    - (v) any installation for the purposes of land drainage or coast protection:
  - (c) the installation in any building or structure of fittings forming, or to form, part of land; including heating, lighting, air conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, security, and communications systems:
  - (d) the alteration, repair, maintenance, extension, demolition, or dismantling of the systems mentioned in paragraph (c):
  - (e) the external or internal cleaning of buildings and structures, so far as it is carried out in the course of their construction, erection, alteration, repair, restoration, or extension:

- (f) any operation that forms an integral part of, or is preparatory to or is for rendering complete, work of the kind referred to in paragraphs (a) to (d); including—
    - (i) site clearance, earthmoving, excavation, tunnelling, and boring; and
    - (ii) laying foundations; and
    - (iii) erecting, maintaining, or dismantling scaffolding or cranes; and
    - (iv) prefabricating customised components of any building or structure, whether carried out on the construction site or elsewhere; and
    - (v) site restoration, landscaping, and the provision of roadways and other access works:
  - (g) the painting or decorating of the internal or external surfaces of any building or structure.
- (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):
  - (b) quantity surveying work carried out in New Zealand in respect of work of the kind referred to in subsection (1)(a) to (g).
- (2) Despite subsection (1), **construction work** does not include any of the following work:
- (a) drilling for or extracting oil or natural gas:
  - (b) extracting (whether by underground or surface working) minerals, including tunnelling or boring, or constructing underground works, for that purpose.

Section 6(1A): inserted, on 1 September 2016, by section 6 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## 7 Meaning of associate

- (1) In this Act, person A is an **associate** of person B (and vice versa) if—
- (a) person A is a body corporate and person B is—
    - (i) a director of that body corporate; or
    - (ii) a related body corporate of that body corporate (within the meaning of section 12(2) of the Financial Markets Conduct Act 2013); or
    - (iii) a director of a related body corporate of that body corporate (within that same meaning); or
  - (b) person A is a spouse, civil union partner, de facto partner, child, or parent of person B; or

- (c) *[Repealed]*
- (d) person A is a partner, to whom the Partnership Law Act 2019 applies, of person B; or
- (e) person A is a nominee or trustee for person B; or
- (f) person A is a director of a company, or person A holds more than 10% of the control rights in the company, and person A and person B are parties to an agreement or arrangement relating to—
  - (i) the control of that company; or
  - (ii) more than 20% of the control rights in that company; or
- (g) person A holds more than 20% of the control rights, or more than 20% of the equity return rights, in person B;
- (h) person A and person B are bodies corporate, and another person holds more than 20% of the control rights, or more than 20% of the equity return rights, in each of person A and person B; or
- (i) person B is the trustee of a trust acting in that capacity and person A is a settlor, beneficiary, or trustee, of that trust; or
- (j) person A is a body corporate and person C holds more than 20% of the control rights, or more than 20% of the equity return rights, in person A and person B is the trustee of a trust acting in that capacity and person C is a settlor, beneficiary, or trustee, of that trust.

(2) In subsection (1),—

**business** means any undertaking that is carried on whether for gain or reward or not

**control right** means a voting right attaching to a voting product

**director**, in relation to a body corporate, means a person occupying the position of director of the body corporate by whatever name called

**equity return rights**, in relation to a business, means that a person has a right or entitlement or expectancy to receive equity returns, directly or indirectly, of the business

**equity returns** means—

- (a) profits of the business; or
- (b) distributions from the business; or
- (c) other equity returns from the business

**expectancy** means, in relation to a business or any other person,—

- (a) an expectancy or a contingent or unvested right to equity returns of the business or person; or
- (b) a right to equity returns of the business or person that does not confer on the holder a certain or defined share of the equity returns available to all

or to any class of persons having equity return rights in the business or person

**person** includes the trustees of a trust acting in that capacity.

- (3) For the purposes of this section, a person has a control right if the person would have a relevant interest, under sections 235 to 238 of the Financial Markets Conduct Act 2013, in the voting products that confer that right,—
- (a) if voting product, in relation to a body, meant a financial product of the body that confers a right to vote at meetings of members (whether or not there is any restriction or limitation on the number of votes that may be cast by, or on behalf of, the holder of the financial product); and included a financial product that, in accordance with the terms of the financial product, is convertible into a financial product of that kind; and
- (b) if references in those sections to a number or percentage of voting products were references to the number or percentage of the votes conferred by those financial products.
- (4) In subsection (3), **financial product** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013.

Section 7(1)(a)(ii): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 7(1)(b): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 7(1)(c): repealed, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 7(1)(d): amended, on 21 April 2020, by section 86 of the Partnership Law Act 2019 (2019 No 53).

Section 7(2) **control right**: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 7(3): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 7(4): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### *Application*

#### **8 Act binds the Crown**

This Act binds the Crown.

#### **9 When Act applies: general**

Subject to sections 11 and 11A, this Act applies to every construction contract (whether or not governed by New Zealand law) that—

- (a) relates to carrying out construction work in New Zealand; and
- (b) is either—
- (i) entered into on or after the date of commencement of this Act; or

- (ii) entered into before the date of commencement of this Act and that is renewed for a further term on or after that date (except that this Act has effect only in relation to obligations that are incurred or undertaken on or after that date); and
- (c) is written or oral, or partly written and partly oral.

Section 9: amended, on 1 December 2015, by section 7 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## 10 When Act applies: residential construction contracts

*[Repealed]*

Section 10: repealed, on 1 December 2015, by section 8 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## 11 When Act does not apply

This Act does not apply to—

- (a) a construction contract under which a party undertakes to carry out construction work as an employee (within the meaning of section 6 of the Employment Relations Act 2000) of the party for whom the work is to be carried out:
- (b) a construction contract to the extent that it contains—
  - (i) provisions under which a party undertakes to carry out construction work as a condition of a loan agreement with any person; or
  - (ii) provisions under which a party undertakes—
    - (A) to lend money or to repay money lent; or
    - (B) to guarantee payment of money owing or repayment of money lent; or
    - (C) to provide an indemnity for construction work carried out under the construction contract; or
  - (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 under which a party undertakes to carry out services—
    - (A) that are for the operation or management of any building or structure or any other part of any land; and
    - (B) that are not, and do not relate to, construction work.

Section 11(b)(ii)(C): amended, on 1 December 2015, by section 9(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 11(b)(iii): inserted, on 1 December 2015, by section 9(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 11(b)(iv): inserted, on 1 December 2015, by section 9(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

**11A Application of this Act: savings provisions relating to Construction Contracts Amendment Act 2015**

- (1) The amendments made to this Act on 1 December 2015 by the Construction Contracts Amendment Act 2015 do not apply to a construction contract that was entered into before 1 December 2015, unless—
  - (a) the contract is renewed for a further term on or after 1 December 2015; or
  - (b) the parties agree that the amendments will apply.
- (2) Section 6(1A) does not apply to a construction contract that was entered into before 1 September 2016 unless—
  - (a) the contract is renewed for a further term on or after 1 September 2016 (in which case that section applies only in relation to those obligations that are incurred or undertaken on or after 1 September 2016); or
  - (b) the parties agree that section 6(1A) will apply.
- (3) Subpart 2A of Part 2 (which relates to retention money) does not apply to a construction contract that was entered into before 31 March 2017 unless—
  - (a) the contract is renewed for a further term on or after 31 March 2017 (in which case that subpart applies only in relation to retention money withheld during the further term); or
  - (b) the parties agree that subpart 2A will apply.

Section 11A: inserted, on 1 December 2015, by section 10 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 11A(2): inserted, on 1 September 2016, by section 11 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 11A(3): inserted, on 31 March 2017, by section 146 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

*No contracting out***12 No contracting out of Act**

This Act has effect despite any provision to the contrary in any agreement or contract.

**Part 2  
Payments****Subpart 1—Prohibition of conditional payment provisions of construction contracts****13 Conditional payment provisions ineffective**

- (1) A conditional payment provision of a construction contract has no legal effect and accordingly—



- (a) is not enforceable in any civil proceedings; and
  - (b) may not be used as a basis for withholding payments that are due and payable under the contract.
- (2) In this section,—

**amount owed**, in relation to a construction contract, means either the whole or part of any amount of money owing for construction work that has already been carried out under the contract

**conditional payment provision of a construction contract** means a provision of the contract—

- (a) that makes the obligation of one party (**party A**) to pay an amount owed to another party (**party B**) conditional on party A receiving payment from a further party (**party C**); or
- (b) that makes the due date for payment of an amount owed by party A to party B contingent on the date on which party A receives payment from party C; or
- (c) that is commonly referred to in the construction industry as a “pay when paid” or “pay if paid” clause of a construction contract; or
- (ca) that is of a kind described in section 18I(1)(a); or
- (d) that is of a prescribed kind (if any).

Section 13(1)(b): amended, on 1 December 2015, by section 12(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 13(2) **conditional payment provision of a construction contract** paragraph (ca): inserted, on 1 December 2015, by section 12(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

## Subpart 2—Payment provisions

Subpart 2 heading: replaced, on 1 December 2015, by section 13 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### *Parties may agree on express terms for payments*

Heading: amended, on 1 December 2015, by section 14 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **14 Parties free to agree on payment provisions in construction contract**

- (1) The parties to a construction contract are free to agree between themselves on a mechanism for determining—
- (a) the number of payments under the contract:
  - (b) the interval between those payments:
  - (c) the amount of each of those payments:
  - (d) the date when each of those payments becomes due.

- (2) To avoid doubt, the parties to a construction contract may expressly agree to a single payment under subsection (1)(a).

Section 14 heading: amended, on 1 December 2015, by section 15(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 14(1)(a): amended, on 1 December 2015, by section 15(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 14(2): inserted, on 1 December 2015, by section 15(3) of the Construction Contracts Amendment Act 2015 (2015 No 92).

*Default provisions for payments in absence of express terms*

Heading: amended, on 1 December 2015, by section 16 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## 15 Application of sections 16 to 18

If the parties to a construction contract fail to agree on a mechanism for determining any of the matters referred to in section 14, the relevant provisions of sections 16 to 18 apply to the extent that those provisions relate to any matter for which a mechanism has not been agreed on between the parties.

## 16 Right to progress payments

A party who has agreed to carry out construction work under a construction contract has the right to progress payments calculated in accordance with section 17.

## 17 Amount of progress payment

- (1) The amount of a progress payment must be calculated by reference to—
- (a) the relevant period for that payment; and
  - (b) the value of the construction work carried out, or to be carried out, during that period; and
  - (c) any relevant provisions in the construction contract (including, without limitation, provisions relating to the retention of money or liquidated damages).
- (2) For the purposes of subsection (1)(a), the relevant period for a progress payment under a construction contract is—
- (a) the period commencing on the day of the month on which construction work was first carried out under the contract and ending on the last day of that month (the **first period**); and
  - (b) each month after the first period.
- (3) For the purposes of subsection (1)(b), the value of construction work must be calculated with regard to—
- (a) the contract price for the work; and
  - (b) any other rates or prices set out in the contract; and

- (c) any variation to the construction work authorised under the contract; and
  - (d) if any work is defective, the estimated cost of rectifying the defect.
- (4) If the contract does not expressly provide for the matters referred to in subsection (3)(a) and (b), the value of construction work must be calculated with regard to—
- (a) the reasonable value of the work; and
  - (b) the reasonable value of any variation to the construction work authorised under the contract; and
  - (c) if any work is defective, the estimated cost of rectifying the defect.

### **18 Due date for payment**

A payment (as that term is defined in section 19) under a construction contract becomes due and payable on the date occurring 20 working days after a payment claim is served under section 20 in relation to the payment.

Section 18: amended, on 1 December 2015, by section 17 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **Subpart 2A—Retention money**

Subpart 2A: inserted, on 31 March 2017, by section 18 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **18A Interpretation**

In this subpart, unless the context otherwise requires, **retention money** means an amount withheld by a party to a construction contract (**party A**) from an amount payable to another party to the contract (**party B**) as security for the performance of party B's obligations under the contract.

Section 18A: inserted, on 31 March 2017, by section 18 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **18B Application of this subpart**

- (1) This subpart applies to commercial construction contracts where the amount of retention money is more than the de minimis amount.
- (2) Regulations may prescribe the de minimis amount for the purpose of subsection (1).

Section 18B: inserted, on 31 March 2017, by section 18 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **18C Default arrangement: trust over retention money**

- (1) All retention money must be held on trust by party A, as trustee, for the benefit of party B.
- (1A) However, *see* section 18D (which allows for an alternative arrangement, involving a complying instrument, to protect payment to party B if party A fails to pay).

- (2) Retention money held on trust may be held in the form of cash or other liquid assets that are readily converted into cash.
- (3) A trust over retention money ends when—
  - (a) the money is paid to party B; or
  - (b) party B, in writing, agrees to give up any claim to the money; or
  - (c) the money ceases to be payable to party B under the contract or otherwise by operation of law.

Section 18C: inserted, on 31 March 2017, by section 18 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 18C heading: amended, on 31 March 2017, by section 147(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 18C(1A): inserted, on 31 March 2017, by section 147(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 18C(2): amended, on 31 March 2017, by section 147(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

### **18D Alternative arrangement: complying instrument protects payment of retention money**

Party A does not need to hold an amount of retention money on trust if and for so long as there is an instrument that complies with section 18FB in respect of the payment to party B of that amount.

Section 18D: replaced, on 31 March 2017, by section 148 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

#### *Retention money: held on trust*

Heading: inserted, on 31 March 2017, by section 149 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

### **18E Use of retention money**

- (1) Party A must not appropriate any retention money held on trust to a use other than to remedy defects in the performance of party B's obligations under the contract.
- (2) Retention money held in trust by party A—
  - (a) does not need to be paid into a separate trust account; and
  - (b) may be commingled with other moneys.

Section 18E: inserted, on 31 March 2017, by section 18 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 18E(1): amended, on 31 March 2017, by section 150 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

### **18F Investment of retention money**

- (1) Retention money held on trust may be invested by party A in accordance with the Trustee Act 1956 in relation to investment of trust funds.

- (2) If, upon the realisation of any investment, the amount received is—
  - (a) less than the amount invested, party A must make up the difference between the amount invested and the amount realised:
  - (b) more than the amount invested, party A may retain the benefit of the amount that exceeds the amount invested.
- (3) Party A may retain the benefit of any interest earned on retention money on or before the date on which it is payable under the contract.

Section 18F: inserted, on 31 March 2017, by section 18 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 18F(1): amended, on 31 March 2017, by section 151 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

### **18FA Protection of retention money**

Retention money held on trust—

- (a) is not available for the payment of debts of any creditor of party A (other than party B):
- (b) is not liable to be attached or taken in execution under the order or process of any court at the instance of any creditor of party A (other than party B).

Compare: 2006 No 1 s 113(1)

Section 18FA: inserted, on 31 March 2017, by section 152 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

#### *Retention money: payment protected by complying instrument*

Heading: inserted, on 31 March 2017, by section 152 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

### **18FB Complying instruments**

- (1) Subsections (2) to (4) set out what is required for an instrument in order for party A to rely, and continue to rely, on section 18D in relation to an amount of retention money.
- (2) The issuer of the instrument must be—
  - (a) a licensed insurer:
  - (b) a registered bank:
  - (c) any other person, who is not an associate of party A, prescribed or within a class prescribed in regulations.
- (3) The instrument must—
  - (a) be issued in favour of party B or endorsed with party B's interest; and
  - (b) require the issuer to pay the retention money to party B if party A fails to pay that money on the date on which it is payable under the construction contract; and

- (c) enable party B to enforce that promise against the issuer; and
  - (d) comply with any requirements that are prescribed in regulations and that apply in respect of the instrument.
- (4) The premium or other money that is payable, or that may become payable, to the issuer for the instrument must have been fully paid by party A and all terms and conditions must have been satisfied so that the instrument is, and remains, in effect.
- (5) An instrument may be of any kind (for example, insurance, a bond, or a guarantee) as long as it complies with the requirements in subsections (2) to (4).
- (6) Nothing in subsection (3)(b) or (c) prevents the instrument from containing reasonable terms and conditions that relate to the manner or time in which party B must submit a claim.
- (7) Regulations for the purpose of this section may, without limitation,—
- (a) apply for all instruments or for classes of instruments (and a class of instrument may be defined by reference to a construction contract or class of construction contract, including a contract entered into or renewed on or after a specified date):
  - (b) include minimum or prohibited terms and conditions for instruments (including terms and conditions that relate to the manner or time in which party B must submit a claim):
  - (c) prescribe forms for instruments.
- (8) In this section,—

**licensed insurer** has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

**registered bank** has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989.

Section 18FB: inserted, on 31 March 2017, by section 152 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

#### *Further provisions*

Heading: inserted, on 31 March 2017, by section 152 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

### **18FC Accounting and records**

- (1) Party A must keep proper accounting records of all retention money that—
- (a) correctly record—
    - (i) all retention money held on trust; and
    - (ii) all amounts of retention money protected by instruments issued for the purpose of this subpart; and
    - (iii) all dealings and transactions in relation to retention money or instruments; and

- (b) comply with generally accepted accounting practice; and
  - (c) are readily and properly auditable.
- (2) Party A must keep proper and readily verifiable records of all instruments issued for the purpose of this subpart, including—
- (a) a copy of all instruments; and
  - (b) for each instrument,—
    - (i) a record of party B's interest in the instrument, including the amount of retention money protected by the instrument; and
    - (ii) all amounts of retention money protected by the instrument; and
    - (iii) if the issuer's liability under the instrument is limited to an amount, that amount; and
    - (iv) evidence that the premium or other money that is payable, or that may become payable, to the issuer for the instrument has been fully paid by party A; and
    - (v) any failure to comply with the terms and conditions of the instrument.
- (3) Subsection (2) does not limit subsection (1).
- (4) Party A must make the accounting and other records available for inspection by party B at all reasonable times and without charge.
- (5) Regulations may prescribe further methods of accounting for retention money or requirements for records.

Section 18FC: inserted, on 31 March 2017, by section 152 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

### **18G Interest on late payment**

- (1) Interest on retention money is payable to party B from the date on which it is payable under the construction contract until the date on which it is paid.
- (2) The interest referred to in subsection (1) is payable—
- (a) at the rate agreed under the construction contract; or
  - (b) if the parties have not agreed a rate under the construction contract, at the rate or rates prescribed in regulations.

Section 18G: inserted, on 31 March 2017, by section 18 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 18G(1): amended, on 31 March 2017, by section 153 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 18G(2)(a): amended, on 31 March 2017, by section 153 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 18(2)(b): amended, on 31 March 2017, by section 153 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

**18H Protection of retention money**

*[Repealed]*

Section 18H: repealed, on 31 March 2017, by section 154 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

**18I Prohibited provisions**

- (1) Any term in a construction contract is void that purports to—
- (a) make the payment of retention money conditional on anything other than the performance of party B's obligations under the contract; or
  - (b) make the date on which payment of retention money is payable later than the date on which party B has performed all of its obligations under the contract to the standard agreed under the contract; or
  - (c) require party B to pay any fees or costs for administering a trust or an instrument under this subpart.
- (2) Any provision in a construction contract is void if the purpose, or one of the purposes, of the provision is to avoid the application of any of the provisions of this subpart.

Section 18I: inserted, on 31 March 2017, by section 18 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 18I(1)(c): amended, on 31 March 2017, by section 155 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

**Subpart 3—Procedure for making and responding to payment claims****19 Interpretation**

In this subpart, unless the context otherwise requires,—

**claimed amount** means an amount of a payment, specified in a payment claim, that the payee claims to be due

**payee** means the party to a construction contract who is entitled to a payment

**payer** means the party to a construction contract who is liable for that payment

**payment** means—

- (a) a progress payment for construction work carried out under a construction contract; or
- (b) another type of payment under a construction contract to which a party who has agreed to carry out construction work under the contract is entitled for, or in relation to, construction work carried out by that party under the contract

**scheduled amount** means an amount of a payment specified in a payment schedule that the payer proposes to pay to the payee in response to a payment claim.



Section 19 **claimed amount**: replaced, on 1 December 2015, by section 19(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 19 **payee**: amended, on 1 December 2015, by section 19(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 19 **payment**: inserted, on 1 December 2015, by section 19(3) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 19 **scheduled amount**: amended, on 1 December 2015, by section 19(4) of the Construction Contracts Amendment Act 2015 (2015 No 92).

## 20 Payment claims

- (1) A payee may serve a payment claim on the payer for a payment,—
  - (a) if the contract provides for the matter, at the end of the relevant period that is specified in, or is determined in accordance with the terms of, the contract; or
  - (b) if the contract does not provide for the matter in the case of a progress payment, at the end of the relevant period referred to in section 17(2); or
  - (c) if the contract does not provide for the matter in the case of a single payment expressly agreed under section 14(1)(a), following the completion of all of the construction work to which the contract relates.
- (2) A payment claim must—
  - (a) be in writing; and
  - (b) contain sufficient details to identify the construction contract to which the payment relates; and
  - (c) identify the construction work and the relevant period to which the payment relates; and
  - (d) state a claimed amount and the due date for payment; and
  - (e) indicate the manner in which the payee calculated the claimed amount; and
  - (f) state that it is made under this Act.
- (3) A payment claim must be accompanied by—
  - (a) an outline of the process for responding to that claim; and
  - (b) an explanation of the consequences of—
    - (i) not responding to a payment claim; and
    - (ii) not paying the claimed amount, or the scheduled amount, in full (whichever is applicable).
- (4) The matters referred to in subsection (3)(a) and (b) must—
  - (a) be in writing; and
  - (b) be in the prescribed form (if any).

Section 20(1): amended, on 1 December 2015, by section 20(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 20(1)(b): replaced, on 1 December 2015, by section 20(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 20(1)(c): inserted, on 1 December 2015, by section 20(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 20(2)(b): amended, on 1 December 2015, by section 20(3) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 20(2)(c): amended, on 1 December 2015, by section 20(3) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 20(2)(d): amended, on 1 December 2015, by section 20(4) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 20(3): amended, on 1 December 2015, by section 20(5) of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **21 Payment schedules**

- (1) A payer may respond to a payment claim by providing a payment schedule to the payee.
- (2) A payment schedule must—
  - (a) be in writing; and
  - (b) identify the payment claim to which it relates; and
  - (c) state a scheduled amount.
- (3) If the scheduled amount is less than the claimed amount, the payment schedule must indicate—
  - (a) the manner in which the payer calculated the scheduled amount; and
  - (b) the payer's reason or reasons for the difference between the scheduled amount and the claimed amount; and
  - (c) in a case where the difference is because the payer is withholding payment on any basis, the payer's reason or reasons for withholding payment.

Section 21(2)(c): amended, on 1 December 2015, by section 21 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **22 Liability for paying claimed amount**

A payer becomes liable to pay the claimed amount on the due date for the payment to which the payment claim relates if—

- (a) a payee serves a payment claim on a payer; and
- (b) the payer does not provide a payment schedule to the payee within—
  - (i) the time required by the relevant construction contract; or
  - (ii) if the contract does not provide for the matter, 20 working days after the payment claim is served.

Section 22: amended, on 1 December 2015, by section 22 of the Construction Contracts Amendment Act 2015 (2015 No 92).

**23 Consequences of not paying claimed amount where no payment schedule provided**

- (1) The consequences specified in subsection (2) apply if the payer—
  - (a) becomes liable to pay the claimed amount to the payee under section 22 as a consequence of failing to provide a payment schedule to the payee within the time allowed by section 22(b); and
  - (b) fails to pay the whole, or any part, of the claimed amount on or before the due date for the payment to which the payment claim relates.
- (2) The consequences are that the payee—
  - (a) may recover from the payer, as a debt due to the payee, in any court,—
    - (i) the unpaid portion of the claimed amount; and
    - (ii) the actual and reasonable costs of recovery awarded against the payer by that court; and
  - (b) may serve notice on the payer of the payee's intention to suspend the carrying out of construction work under the construction contract.
- (3) A notice referred to in subsection (2)(b) must state—
  - (a) the ground or grounds on which the proposed suspension is based; and
  - (b) that the notice is given under this Act.
- (4) In any proceedings for the recovery of a debt under this section, the court must not enter judgment in favour of the payee unless it is satisfied that the circumstances referred to in subsection (1) exist.

Section 23(1)(b): amended, on 1 December 2015, by section 23 of the Construction Contracts Amendment Act 2015 (2015 No 92).

**24 Consequences of not paying scheduled amount in manner indicated by payment schedule**

- (1) The consequences specified in subsection (2) apply if—
  - (a) a payee serves a payment claim on a payer; and
  - (b) the payer provides a payment schedule to the payee within the time allowed by section 22(b); and
  - (c) the payment schedule indicates a scheduled amount that the payer proposes to pay to the payee; and
  - (d) the payer fails to pay the whole, or any part, of the scheduled amount on or before the due date for the payment to which the payment claim relates.
- (2) The consequences are that the payee—
  - (a) may recover from the payer, as a debt due to the payee, in any court,—
    - (i) the unpaid portion of the scheduled amount; and

- (ii) the actual and reasonable costs of recovery awarded against the payer by that court; and
  - (b) may serve notice on the payer of the payee's intention to suspend the carrying out of construction work under the construction contract.
- (3) A notice referred to in subsection (2)(b) must state—
  - (a) the ground or grounds on which the proposed suspension is based; and
  - (b) that the notice is given under this Act.
- (4) In any proceedings for the recovery of a debt under this section, the court must not enter judgment in favour of the payee unless it is satisfied that the circumstances referred to in subsection (1) exist.

Section 24(1)(d): amended, on 1 December 2015, by section 24 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### Subpart 4—Suspension of work

Subpart 4: inserted, on 1 December 2015, by section 25 of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### 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—
  - (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:
    - (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
  - (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.
- (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
  - (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
  - (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.
- (4) If party A exercises the right conferred by subsection (1), the exercise of that right does not—
- (a) affect any rights that would otherwise have been available to party A under subpart 3 of Part 2 of the Contract and Commercial Law Act 2017; or
  - (b) enable party B to exercise any rights that may otherwise have been available to party B under that subpart 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 when party B pays the amount in full or complies with the adjudicator's determination.

Compare: 2002 No 46 s 72

Section 24A: inserted, on 1 December 2015, by section 25 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 24A(4)(a): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 24A(4)(b): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

## **Part 3**

### **Adjudication of disputes**

#### **Subpart 1—Preliminary**

#### **25 Right to refer disputes to adjudication**

- (1) Any party to a construction contract—
- (a) has the right to refer a dispute to adjudication; and
  - (b) may exercise that right even though the dispute is the subject of proceedings between the same parties in a court or tribunal.
- (2) An example of a dispute is a disagreement between the parties to a construction contract about—
- (a) whether an amount is payable under the contract (for example, a progress payment) or the reasons given for non-payment of that amount; or

- (b) whether there has been a breach of a term of the contract (including a term implied into the contract under the Building Act 2004 or any other enactment).
- (3) A dispute may not be referred to adjudication without the consent of the parties to the dispute if—
  - (a) the parties to the relevant construction contract have agreed to refer disputes between them to arbitration; and
  - (b) the arbitration is—
    - (i) an international arbitration as defined in article 1(3) of Schedule 1 of the Arbitration Act 1996; or
    - (ii) covered by the provisions of the Protocol on Arbitration Clauses (1923); or
    - (iii) covered by the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and is an arbitration to which the Arbitration (International Investment Disputes) Act 1979 applies.
- (4) Subsection (3) prevails over subsection (1).

Section 25(2): replaced, on 1 December 2015, by section 26 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **26 Relationship between Part and other dispute resolution procedures**

- (1) To avoid doubt, nothing in this Part prevents the parties to a construction contract from submitting a dispute to another dispute resolution procedure (for example, to a court or tribunal, or to mediation), whether or not the proceedings for the other dispute resolution procedure take place concurrently with an adjudication.
- (2) If a party to a construction contract submits a dispute to another dispute resolution procedure while the dispute is the subject of an adjudication, the submission to that other dispute resolution procedure does not—
  - (a) bring to an end the adjudication proceedings; or
  - (b) otherwise affect the adjudication.
- (3) An adjudicator must terminate the adjudication proceedings on a dispute if, before the adjudicator determines the dispute, that dispute is determined under another dispute resolution procedure.
- (4) Nothing in any other enactment or rule of law or any contract affects the application of this Part.

Section 26(3): amended, on 1 December 2015, by section 27 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## 27 Effect of Part on civil proceedings

- (1) Except as provided in this section, nothing done under, or for the purposes of, this Part affects any civil proceedings arising under a construction contract.
- (2) In any proceedings before a court or tribunal, or before a member under the Weathertight Homes Resolution Services Act 2006, in relation to any matter arising under a construction contract, the court or tribunal or member—
  - (a) must allow for any amount paid to a party to the contract under, or for the purposes of, this Part in any order or award the court, tribunal, or member makes in those proceedings; and
  - (b) may make any orders that the court, tribunal, or member considers appropriate, having regard to any steps taken by a party to the contract in good faith and in reliance on an adjudicator's determination under this Part (including an order requiring a party to the contract to pay for goods and services supplied by another party to that contract in good faith and in reliance on an adjudicator's determination).

Section 27(1): amended, on 1 December 2015, by section 28 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 27(2): amended, on 1 April 2007, by section 127(2)(a) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Section 27(2): amended, on 1 April 2007, by section 127(2)(b) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Section 27(2): amended, on 1 April 2007, by section 127(2)(c) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Section 27(2)(a): amended, on 1 April 2007, by section 127(2)(c) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Section 27(2)(b): amended, on 1 April 2007, by section 127(2)(c) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

## Subpart 2—Procedure for initiating adjudication and appointing adjudicator

### 28 How to initiate adjudication

- (1) Adjudication is initiated by a claimant serving written notice of the claimant's intention to refer a dispute for adjudication (the **notice of adjudication**) on—
  - (a) the other party or parties to the construction contract; and
  - (b) the owner if—
    - (i) a determination of an owner's liability is sought under section 30(a); and
    - (ii) an approval for the issue of a charging order is sought under section 30(b).
- (2) The notice of adjudication must state—
  - (a) the date of the notice:

- (b) the nature and a brief description of the dispute and of the parties involved:
  - (c) details of where and when the dispute arose:
  - (d) the relief or remedy that is sought:
  - (e) whether approval for the issue of a charging order under section 29 is being sought:
  - (f) whether a determination of an owner's liability under section 30(a) and an approval for the issue of a charging order under section 30(b) are being sought:
  - (g) details sufficient to identify the construction contract to which the dispute relates, including—
    - (i) the names and addresses of the parties to the contract; and
    - (ii) if available, the addresses that the parties have specified for the service of notices.
- (3) A notice of adjudication must also set out prominently, in the 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.

Section 28(3): inserted, on 1 December 2015, by section 29 of the Construction Contracts Amendment Act 2015 (2015 No 92).

**29 Claimant may seek approval for issue of charging order in respect of construction site owned by respondent**

A claimant may, in the notice of adjudication, seek the adjudicator's approval for the issue of a charging order in respect of a construction site owned by a respondent.

**30 Claimant may seek determination of liability of owner who is not respondent**

A claimant may, in the notice of adjudication, seek—

- (a) a determination under section 50 that an owner who is not a respondent is jointly and severally liable with the respondent to make a payment to the claimant; and
- (b) approval for the issue of a charging order in respect of the construction site.

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

- (1) A claimant may not seek any of the matters referred to in section 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 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.
- (2) In this section, **family trust** means a trust that is established primarily to benefit a natural person for whom the settlor has natural love and affection.

Section 31: replaced, on 1 December 2015, by section 30 of the Construction Contracts Amendment Act 2015 (2015 No 92).

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

- (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
  - (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.
- (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
  - (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.

Compare: 2002 No 46 s 64

Section 31A: inserted, on 1 December 2015, by section 30 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **32 Owner who is not respondent is party to adjudication proceedings**

- (1) An owner who is not a respondent—

- (a) is a party to adjudication proceedings in which the claimant seeks—
    - (i) a determination of that owner’s liability under section 30(a); and
    - (ii) approval for the issue of a charging order under section 30(b); and
  - (b) has all the rights of a party, including (without limitation),—
    - (i) the right to be present at the adjudication proceedings; and
    - (ii) the right to present that owner’s case and be heard at those proceedings.
- (2) Unless the context otherwise requires, the following references must be treated as including references to the owner of a construction site (whether or not the owner is also the respondent):
- (a) a reference to a respondent in sections 37, 37A, 39, 43, 45, 46, and 57; and
  - (b) a reference to a party, or the parties, to an, or the, adjudication in this Part or in section 73.

Section 32(2)(a): amended, on 1 December 2015, by section 31 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **33 Selection of adjudicator**

- (1) The claimant must, within the time required under subsection (2),—
- (a) request the person (if any) chosen by agreement between the relevant parties to act as adjudicator; or
  - (b) if the person referred to in paragraph (a) has already indicated that he or she is unwilling or unable to act, request any other person chosen by agreement between the relevant parties to act as adjudicator; or
  - (c) if no person is agreed on, request a nominating body chosen by agreement between the relevant parties to select a person to act as adjudicator; or
  - (d) if the persons referred to in paragraphs (a) and (b) are unwilling or unable to act, and paragraph (c) does not apply, request an authorised nominating authority chosen by the claimant to select a person to act as adjudicator.
- (2) The time required is,—
- (a) for the purposes of subsection (1)(a) and (b), as soon as practicable after the notice of adjudication has been served; and
  - (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
  - (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.

- (3) An agreement about the choice of an adjudicator or a nominating body or an authorised nominating authority is not binding on the parties to the adjudication if that agreement was made (whether under the relevant construction contract or otherwise) before the dispute between them arose.
- (4) It is the duty of a nominating body or, as the case may be, an authorised nominating authority to select a person and to request that person to act as adjudicator as soon as practicable.
- (5) A request made under this section must—
  - (a) be in writing; and
  - (b) be accompanied by a copy of the notice of adjudication; and
  - (c) state that it is made under this Act.

Section 33(2)(b): replaced, on 1 December 2015, by section 32 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 33(2)(c): inserted, on 1 December 2015, by section 32 of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### **34 Eligibility criteria for adjudicators**

- (1) A person is eligible to be an adjudicator in relation to a construction contract if the person meets the requirements relating to qualifications, expertise, and experience as may be prescribed (if any).
- (2) A person is not eligible to be an adjudicator in relation to a construction contract to which the person is a party.
- (3) A person—
  - (a) must disclose to the parties to the adjudication and, as the case may be, the nominating body or the authorised nominating authority, any conflict of interest (whether financial or otherwise); and
  - (b) must not act as an adjudicator in that dispute unless all of the parties to the adjudication agree.

#### **35 Appointment of adjudicator**

- (1) A person requested to act as an adjudicator in accordance with section 33 must, within 2 working days of receiving the request, indicate whether he or she is willing and able to act in that capacity.
- (2) If the person is willing and able to act as an adjudicator, he or she must serve a notice of acceptance (a **notice of acceptance**) on the parties to the adjudication and, as the case may be, the nominating body or the authorised nominating authority.
- (3) However, if the person has a conflict of interest, he or she must not serve a notice of acceptance under subsection (2) until the parties have confirmed (whether orally or in writing) that they agree to the person acting as an adjudicator.

- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) A person is appointed as an adjudicator to determine the dispute on serving a notice of acceptance that complies with section 35A.

Section 35(2): amended, on 1 December 2015, by section 33(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 35(4): repealed, on 1 December 2015, by section 33(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 35(5): repealed, on 1 December 2015, by section 33(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 35(6): amended, on 1 December 2015, by section 33(3) of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **35A Notice of acceptance**

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

Section 35A: inserted, on 1 December 2015, by section 34 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **36 Referral of dispute to adjudicator**

- (1) After an adjudicator has been appointed, the claimant must, within 5 working days of receiving the adjudicator's notice of acceptance, refer the dispute in writing (the **adjudication claim**) to the adjudicator.
- (2) The adjudication claim—
- (a) must specify the nature or the grounds of the dispute and, to the extent that it remains relevant, be accompanied by a copy of the notice of adjudication; and
  - (b) may be accompanied by any other documents.
- (3) The claimant must serve a copy of the adjudication claim and any accompanying documents on every other party to the adjudication either before or immediately after they are served on the adjudicator.

### **37 Response to adjudication claim**

- (1) A respondent may serve 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
  - (b) within any further time that the parties to the adjudication agree; or
  - (c) within any further time that the adjudicator allows.
- (2) The response may be accompanied by any other documents.

- (3) The respondent must serve a copy of the response and any accompanying documents on the claimant and every other party to the adjudication either before or immediately after they are served on the adjudicator.
- (4) Subsection (5) applies if, before the end of the period referred to in subsection (1)(a), the respondent requests additional time to serve a written response.
- (5) 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—
    - (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:
  - (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.

Section 37(1): replaced, on 1 December 2015, by section 35(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 37(4): inserted, on 1 December 2015, by section 35(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 37(5): inserted, on 1 December 2015, by section 35(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **37A Reply to response to adjudication claim**

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

Section 37A: inserted, on 1 December 2015, by section 36 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### Subpart 3—Conduct of adjudication proceedings

#### **38 Jurisdiction of adjudicators**

- (1) An adjudicator's jurisdiction in relation to any dispute that has been referred to adjudication is limited to determining—
  - (a) the matters referred to in sections 48, 49(1)(c), and 50(1)(c); and
  - (b) any other matters that are of a consequential or ancillary nature necessary to exercise or complete the exercise of the jurisdiction conferred by paragraph (a).
- (2) However, the parties to an adjudication may, at any time, by written agreement, extend the jurisdiction of an adjudicator to determine any matters in addition to those mentioned in subsection (1).

#### **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—

- (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).

Compare: 2002 No 46 s 63

Section 38A: inserted, on 1 December 2015, by section 37 of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### **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.
- (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

Section 38B: inserted, on 1 December 2015, by section 37 of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### **39 Withdrawal of adjudication proceedings**

An adjudication claim may be withdrawn if—

- (a) the claimant serves written notice of withdrawal on the adjudicator, unless the respondent objects to the withdrawal and the adjudicator recognises a legitimate interest on the respondent's part in obtaining a determination in respect of the dispute; or

- (b) the parties agree on the withdrawal.

**40 Consolidation of adjudication proceedings**

If 2 or more adjudication proceedings are pending, the adjudicator may, with the written consent of all of the parties to those adjudication proceedings, determine those adjudication proceedings at the same time.

**41 Duties of adjudicator**

An adjudicator must—

- (a) act independently, impartially, and in a timely manner; and
- (b) avoid incurring unnecessary expense; and
- (c) comply with the principles of natural justice; and
- (d) disclose any conflict of interest to the parties to an adjudication; and
- (e) if paragraph (d) applies, resign from office unless those parties agree otherwise.

**42 Powers of adjudicator**

(1) An adjudicator may—

- (a) conduct the adjudication in any manner that he or she thinks fit; and
- (b) request further written submissions from the parties to the adjudication, but must give the relevant parties an opportunity to comment on those submissions; and
- (c) request the parties to the adjudication to provide copies of any documents that he or she may reasonably require; and
- (d) set deadlines for further submissions and comments by the parties; and
- (e) appoint an expert adviser to report on specific issues (as long as the parties are notified before the appointment is made); and
- (f) call a conference of the parties; and
- (g) carry out an inspection of any construction work or any other thing to which the dispute relates (as long as the consent of the owner or occupier is obtained before entry to any land or premises is made and, if the owner or occupier is a party to the adjudication, that party's consent must not be unreasonably withheld); and
- (h) request the parties to do any other thing during the course of an adjudication that he or she considers may reasonably be required to enable the effective and complete determination of the questions that have arisen in the adjudication; and
- (i) issue any other reasonable directions that relate to the conduct of the adjudication.

- (2) The parties to the adjudication must comply with any request or direction of the adjudicator made or given in accordance with this section.

**43 When adjudicator's powers not affected**

The adjudicator's power to determine a dispute is not affected by the failure of—

- (a) the respondent to serve a response on the claimant under section 37; or
- (b) any of the parties to—
  - (i) make a submission or comment within the time allowed; or
  - (ii) provide specified information within the time allowed; or
  - (iii) comply with the adjudicator's call for a conference of the parties; or
  - (iv) do any other thing that the adjudicator requests or directs.

**44 Adjudicator may draw inferences and determine dispute based on available information**

If any failure of the kind referred to in section 43 occurs in an adjudication, the adjudicator may—

- (a) draw any inferences from that failure that he or she thinks fit; and
- (b) determine the dispute on the basis of the information available to him or her; and
- (c) give any weight that he or she thinks fit to any information provided outside any period that he or she requested or directed.

**Subpart 4—Adjudicator's determination**

**45 Adjudicator's determination: matters to be considered**

In determining a dispute, an adjudicator must consider only the following matters:

- (a) the provisions of this Act;
- (b) the provisions of the construction contract to which the dispute relates;
- (c) the adjudication claim referred to in section 36 and the claimant's written reply (if any) referred to in section 37A, together with all submissions (including relevant documentation) that have been made by the claimant;
- (d) the respondent's response (if any) referred to in section 37 and the respondent's rejoinder (if any) referred to in section 37A(4)(b), together with all submissions (including relevant documentation) that have been made by the respondent;
- (e) the report of the experts appointed to advise on specific issues (if any):



- (f) the results of any inspection carried out by the adjudicator:
- (g) any other matters that the adjudicator reasonably considers to be relevant.

Section 45(c): amended, on 1 December 2015, by section 38(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 45(d): amended, on 1 December 2015, by section 38(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### **46 Adjudicator's determination: timing**

- (1) An adjudicator—
  - (a) must not determine a dispute until after the end of the period referred to in section 37(1) within which the respondent may serve on the adjudicator a written response to an adjudication claim; and
  - (b) must not determine a dispute having regard to that response unless it was served on the adjudicator before the end of that period.
- (2) An adjudicator must determine a dispute—
  - (a) within 20 working days after the end of the period referred to in section 37(1) during which the respondent may serve on the adjudicator a written response to an adjudication claim; or
  - (b) within 30 working days after the end of the period referred to in that section if the adjudicator considers that, even though the parties to the adjudication do not agree, further time for the determination of the dispute is reasonably required; or
  - (c) within any further time that the parties to the adjudication agree.
- (3) An adjudicator must give a copy of the determination to every party to the adjudication as soon as practicable after making a determination.
- (4) Subsection (3) is subject to section 57(6).

#### **47 Adjudicator's determination: form**

- (1) An adjudicator's determination—
  - (a) must be in the prescribed form (if any); or
  - (b) if there is no prescribed form,—
    - (i) must be in writing; and
    - (ia) must be dated; and
    - (ii) must contain the reasons for the determination (unless the parties to the adjudication, by written agreement, indicate that the requirement for the adjudicator to give reasons may be dispensed with); and
    - (iii) must include a statement setting out the consequences for the defendant if the defendant takes no steps in relation to an applica-

tion from the plaintiff to enforce the adjudicator's determination by entry as a judgment.

- (2) A failure to comply with subsection (1) does not affect the validity of an adjudicator's determination.
- (3) Within 2 working days after the date on which a copy of the determination is given to the parties to the adjudication under section 46(3), an adjudicator may, on his or her own initiative, correct in the determination any errors in computation or any clerical or typographical errors or any errors of a similar nature.

Section 47(1)(b)(ia): inserted, on 1 December 2015, by section 39(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 47(1)(b)(iii): amended, on 1 December 2015, by section 39(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### **48 Adjudicator's determination: substance**

- (1) If an amount of money under the relevant construction contract is claimed in an adjudication, the adjudicator must determine—
  - (a) whether or not any of the parties to the adjudication are liable, or will be liable if certain conditions are met, to make a payment under that contract; and
  - (b) any questions in dispute about the rights and obligations of the parties under that contract.
- (2) If no amount of money under the relevant construction contract is claimed in an adjudication, the adjudicator must determine any questions in dispute about the rights and obligations of the parties under that contract.
- (3) If an adjudicator determines under subsection (1)(a) that a party to the adjudication is liable, or will be liable if certain conditions are met, to make a payment, the adjudicator—
  - (a) must also determine—
    - (i) the amount payable or conditionally payable; and
    - (ii) the date on which that amount became or becomes payable; and
  - (b) may determine that the liability of a party to the adjudication to make a payment depends on certain conditions being met.
- (4) Despite subsections (1) and (2), an adjudicator is not required to determine a dispute that has been withdrawn in accordance with section 39.
- (5) If a dispute is settled by agreement between the parties before the adjudicator's determination is given, the adjudicator—
  - (a) must terminate the adjudication proceedings; and
  - (b) if requested by the parties, may record the settlement in the form of a determination on agreed terms.

**49 Approval for issue of charging order over construction site owned by respondent**

- (1) This section applies if—
  - (a) a claimant has referred to adjudication a dispute about whether an amount is payable by a respondent under the construction contract; and
  - (b) the claimant has sought, in the notice of adjudication, the adjudicator's approval for the issue of a charging order in respect of a construction site owned by the respondent; and
  - (c) the adjudicator has determined that the respondent—
    - (i) is liable to pay (whether in whole or in part) the amount claimed in the adjudication; and
    - (ii) is the owner of the construction site.
- (2) If this section applies, the adjudicator must—
  - (a) approve the issue of a charging order in respect of the construction site owned by the respondent; and
  - (b) record that approval in his or her determination accordingly; and
  - (c) include in his or her determination sufficient particulars to identify the construction site to which the approval for the issue of a charging order relates.

**50 Determination of liability of owner who is not respondent and approval of charging order over construction site owned by that owner**

- (1) This section applies if—
  - (a) a claimant has referred to adjudication a dispute about whether an amount is payable by a respondent under a construction contract; and
  - (b) the claimant has sought, in the notice of adjudication,—
    - (i) a determination of the owner's liability under section 30(a); and
    - (ii) approval for the issue of a charging order in respect of the construction site under section 30(b); and
  - (c) the adjudicator has determined that the respondent—
    - (i) is liable to pay (whether in whole or in part) the amount claimed in the adjudication; and
    - (ii) is an associate of the owner.
- (2) If this section applies, the adjudicator must—
  - (a) determine that the owner is jointly and severally liable, with the respondent, to pay (whether in whole or in part) the amount claimed in the adjudication; and
  - (b) record in his or her determination that the owner is so liable and the amount of the owner's liability; and

- (c) approve the issue of a charging order in respect of the construction site, and record that approval in his or her determination accordingly; and
  - (d) include in his or her determination sufficient particulars to identify the construction site to which the approval for the issue of a charging order relates.
- (3) The liability of an owner under subsection (2)(a) must not exceed the reasonable value of all of the construction work carried out on the construction site by, or on behalf of, the respondent (including construction work carried out by another party for, or on behalf of, the respondent), less all amounts actually paid by the owner in respect of that work.
- (4) To avoid doubt, the owner's liability—
- (a) is satisfied to the extent that the respondent has paid the amount determined by the adjudicator under subsection (1)(c); or
  - (b) is discharged if the respondent's liability is set aside or otherwise discharged.

**51 Owner who is not respondent may discharge liability and recover amount from respondent**

- (1) An owner who is not a respondent may discharge that owner's liability under section 50(2)(a) by paying the amount determined by the adjudicator to the claimant.
- (2) Any payment made by an owner under subsection (1)—
- (a) may be treated by the owner as a payment to the respondent in reduction of any amount that the owner owes, or may in future owe, to the respondent in connection with the construction work; or
  - (b) may be recovered by the owner as a debt due from the respondent.
- (3) If the owner has paid an amount determined by the adjudicator, the subsequent setting aside of the adjudicator's determination does not affect any rights conferred on the owner under this section.

*Review of adjudicator's determination in respect of owner who is not respondent*

*[Repealed]*

Heading: repealed, on 1 December 2015, pursuant to section 40 of the Construction Contracts Amendment Act 2015 (2015 No 92).

**52 Owner who is not respondent may apply to District Court for review of adjudicator's determination**

*[Repealed]*

Section 52: repealed, on 1 December 2015, by section 40 of the Construction Contracts Amendment Act 2015 (2015 No 92).

**53 Procedure for seeking review**

*[Repealed]*

Section 53: repealed, on 1 December 2015, by section 40 of the Construction Contracts Amendment Act 2015 (2015 No 92).

**54 Powers of District Court on review**

*[Repealed]*

Section 54: repealed, on 1 December 2015, by section 40 of the Construction Contracts Amendment Act 2015 (2015 No 92).

**55 Effect of review on adjudicator's determination**

*[Repealed]*

Section 55: repealed, on 1 December 2015, by section 40 of the Construction Contracts Amendment Act 2015 (2015 No 92).

*Costs of adjudication proceedings*

**56 Costs of adjudication proceedings**

- (1) An adjudicator may determine that costs and expenses must be met by any of the parties to the adjudication (whether those parties are or are not, on the whole, successful in the adjudication) if the adjudicator considers that the party has caused those costs and expenses to be incurred unnecessarily by—
  - (a) bad faith on the part of that party; or
  - (b) allegations or objections by that party that are without substantial merit.
- (2) If the adjudicator does not make a determination under subsection (1), the parties to the adjudication must meet their own costs and expenses.
- (3) An agreement about how the costs and expenses in adjudication proceedings are to be apportioned (including an agreement that a party is to indemnify another party in relation to those costs and expenses) is not binding on the parties to the adjudication if that agreement was made before the dispute arose.

*Adjudicator's fees*

**57 Adjudicator's fees**

- (1) An adjudicator is entitled to be paid, by way of fees and expenses, an amount—
  - (a) that is agreed between the adjudicator and the parties to the adjudication; or
  - (b) if there is no agreement, that is reasonable, having regard to the work done and expenses incurred by the adjudicator.
- (2) The parties to the adjudication are jointly and severally liable to pay the adjudicator's fees and expenses.

- (3) The parties to the adjudication are each liable to contribute to the adjudicator's fees and expenses in—
  - (a) equal proportions; or
  - (b) the proportions that the adjudicator may determine.
- (4) An adjudicator may make a determination under subsection (3)(b) if, in the adjudicator's view,—
  - (a) the claimant's adjudication claim, or the respondent's response, was without substantial merit; or
  - (b) a party to the adjudication acted in a contemptuous or improper manner during the adjudication.
- (5) An adjudicator is not entitled to be paid any fees and expenses in connection with an adjudication if he or she fails to determine the dispute within the time allowed by section 46(2).
- (6) Despite subsection (5), an adjudicator may require payment of his or her fees and expenses before communicating his or her determination on a dispute to the parties to the adjudication.
- (7) If an adjudication claim is withdrawn or terminated, or the dispute between the parties is resolved, an adjudicator is entitled to be paid the fees and expenses incurred in the adjudication up to, and including, as the case may be, the date on which—
  - (a) the adjudication claim was withdrawn or terminated; or
  - (b) the adjudicator was notified that the dispute had been resolved.

### Subpart 5—Effect of adjudicator's determination

#### **58 Enforceability of adjudicator's determination**

- (1) An adjudicator's determination under section 48(1)(a) is enforceable in accordance with section 59.
- (2) An adjudicator's determination under section 48(1)(b) or (2) about the parties' rights and obligations under the construction contract is enforceable in accordance with section 59A.
- (3) *[Repealed]*

Section 58(2): amended, on 1 December 2015, by section 41(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 58(3): repealed, on 1 December 2015, by section 41(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

**59 Consequences of not complying with adjudicator's determination under section 48(1)(a)**

- (1) The consequences specified in subsection (2) apply if a party to the adjudication fails, before the close of the relevant date, to pay the whole or part of the amount determined by an adjudicator.
- (2) The consequences are that the party who is owed the amount (**party A**) may do all or any of the following:
  - (a) recover from the party who is liable to make the payment (**party B**), as a debt due to party A, in any court,—
    - (i) the unpaid portion of the amount; and
    - (ii) the actual and reasonable costs of recovery awarded against party B by that court:
  - (b) if party A is a party who carries out construction work under a construction contract, serve notice on party B of party A's intention to suspend the carrying out of construction work under the contract:
  - (c) apply for the adjudicator's determination to be enforced by entry as a judgment in accordance with subpart 2 of Part 4.
- (3) A notice referred to in subsection (2)(b) must state—
  - (a) the ground or grounds on which the proposed suspension is based; and
  - (b) that the notice is given under this Act.
- (4) In any proceedings for the recovery of a debt under this section, the court must not enter judgment in favour of a party unless it is satisfied that the circumstances referred to in subsection (1) exist.
- (5) In this section, **relevant date** means—
  - (a) the date that occurs 2 working days after the date on which a copy of the relevant determination is given to the parties to the adjudication under section 46(3); or
  - (b) if the adjudicator determines a later date under section 48(3)(a)(ii), that later date.

**59A Consequence of not complying with adjudicator's determination under section 48(1)(b) or (2)**

- (1) This section applies if a party against whom an adjudication determination is made fails to comply with the adjudicator's determination under section 48(1)(b) or (2) in respect of rights and obligations under the contract.
- (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).

Section 59A: inserted, on 1 December 2015, by section 42 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **60 Effect of review or other proceeding on adjudicator's determination**

An adjudicator's determination is binding on the parties to the adjudication and continues to be of full effect even though—

- (a) a party has applied for judicial review of the determination; or
- (b) any other proceeding relating to the dispute between the parties has been commenced.

Section 60 heading: amended, on 1 December 2015, by section 43 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 60: amended, on 1 December 2015, by section 43 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **61 Consequence of not complying with adjudicator's determination under section 48(1)(b) or (2)**

*[Repealed]*

Section 61: repealed, on 1 December 2015, by section 44 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### Subpart 6—Miscellaneous matters relating to adjudication

## **62 Special provisions for residential construction contracts**

*[Repealed]*

Section 62: repealed, on 1 December 2015, by section 45 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **63 Special provisions for adjudication if approval for charging order is sought by claimant**

*[Repealed]*

Section 63: repealed, on 1 December 2015, by section 45 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **64 Compliance with requirements of Act relating to supply of certain information**

*[Repealed]*

Section 64: repealed, on 1 December 2015, by section 45 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **65 Nominating authorities**

- (1) The Minister may, on application made by any person in accordance with subsection (2), authorise the applicant to nominate adjudicators for the purposes of this Act.
- (2) Every application for an authority must—
  - (a) be in writing; and



- (b) be accompanied by the prescribed information (if any).
  - (3) The Minister may withdraw any authority given under this section.
- 66 Claimant may seek fresh adjudication if no adjudicator's notice of acceptance received or dispute not determined**
- (1) A claimant may take the actions set out in subsection (2) if either—
    - (a) the claimant has not received any notice of acceptance from an adjudicator within 5 working days of the person referred to in section 33 receiving a request to act as an adjudicator; or
    - (b) an adjudicator who accepts an adjudication—
      - (i) dies or becomes seriously ill or is otherwise unavailable for any reason; or
      - (ii) fails to determine the dispute within the time allowed by section 46(2).
  - (2) The actions are—
    - (a) the claimant may withdraw the notice of adjudication, by notice in writing served on every other party to the adjudication and, as the case may be, the nominating body or the authorised nominating authority; and
    - (b) the claimant may serve a new notice of adjudication under section 28.
  - (3) If a new notice of adjudication is served in accordance with this section, this Part applies as if no notice of adjudication had been served previously.

**67 Parties may be represented at adjudication proceedings**

*[Repealed]*

Section 67: repealed, on 1 December 2015, by section 45 of the Construction Contracts Amendment Act 2015 (2015 No 92).

**68 Confidentiality of adjudication proceedings**

- (1) This section applies to the following information:
  - (a) any statement, admission, or document created or made for the purposes of an adjudication; and
  - (b) any information (whether written or oral) that, for the purposes of the adjudication, is disclosed in the course of the adjudication.
- (2) The adjudicator and any party to a dispute must not disclose to another person any of the information to which this section applies except—
  - (a) with the consent of the relevant party; or
  - (b) to the extent that the information is already in the public domain; or
  - (c) to the extent that disclosure is necessary for the purposes of, or in connection with, the adjudication or the enforcement of the adjudicator's determination; or

- (d) in statistical or summary form arranged in a manner that prevents any information disclosed from being identified by any person as relating to any particular person; or
- (e) 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 person.

### **69 Adjudicators not compellable witnesses**

An adjudicator may not be required to give evidence in any civil proceedings on anything connected with an adjudication that has come to his or her knowledge in the course of adjudication proceedings.

### **70 Exclusion of liability**

- (1) Neither an adjudicator nor an expert adviser appointed under section 42(1)(e) is under any civil or criminal liability for anything done, or omitted to be done, in the course of the exercise or intended exercise of,—
  - (a) in the case of an adjudicator, any of the adjudicator’s functions, duties, or powers under this Act; or
  - (b) in the case of an expert adviser, any of the expert adviser’s functions under this Act.
- (2) Subsection (1) does not exclude the liability of an adjudicator or expert adviser for anything done or omitted to be done in bad faith.

### **71 Application of other enactments to adjudications**

- (1) The Limitation Act 2010 applies to adjudications as it applies to claims (as defined in section 4 of that Act).
- (2) Adjudications must be treated as—
  - (a) proceedings for the purposes of section 76 of the Insolvency Act 2006; and
  - (b) actions or proceedings for the purposes of section 42 of the Corporations (Investigation and Management) Act 1989; and
  - (c) legal proceedings for the purposes of section 248 of the Companies Act 1993; and
  - (d) civil proceedings against a person for the purposes of section 393(2) of the Building Act 2004.

Section 71(1): substituted, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Section 71(2)(a): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 71(2)(c): amended, on 1 December 2015, by section 46(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 71(2)(d): inserted, on 1 December 2015, by section 46(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

## Part 4

### Review and enforcement of adjudicator's determination

Part 4 heading: replaced, on 1 December 2015, by section 47 of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### Subpart 1AA—Review of adjudicator's determination

Subpart 1AA: inserted, on 1 December 2015, by section 48 of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### *Review of adjudicator's determination in respect of owner who is not respondent*

Heading: inserted, on 1 December 2015, by section 48 of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### **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 the 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
  - (b) an adjudicator's approval for the issue of a charging order in respect of the construction site.
- (2) The District Court has the jurisdiction to hear and determine an application for review under this section despite any limits imposed on the District Court in its ordinary civil jurisdiction by sections 74 to 79 of the District Court Act 2016.

Compare: 2002 No 46 s 52

Section 71A: inserted, on 1 December 2015, by section 48 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 71A(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 71A(2): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### **71B Procedure for seeking review**

- (1) An application for review under section 71A must be made by filing a notice, in the prescribed form (if any), in the office of 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).

Compare: 2002 No 46 s 53

Section 71B: inserted, on 1 December 2015, by section 48 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 71B(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **71C Powers of District Court on review**

- (1) For the purpose of hearing the application for review, the District Court—
  - (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
  - (c) has all the powers vested in the 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
  - (b) refuse the application.
- (3) The District Court's determination under subsection (2)(a)—
  - (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.

Compare: 2002 No 46 s 54

Section 71C: inserted, on 1 December 2015, by section 48 of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 71C(1)(c): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 71C(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **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

Section 71D: inserted, on 1 December 2015, by section 48 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **Subpart 1—Suspension of work**

*[Repealed]*

Subpart 1: repealed, on 1 December 2015, by section 49 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **72 Suspension of construction work**

*[Repealed]*

Section 72: repealed, on 1 December 2015, by section 49 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### **Subpart 2—Enforcement of adjudicator's determination**

*Enforcement of adjudicator's determination generally*

## **73 Enforcement of adjudicator's determination**

- (1) *[Repealed]*
- (2) A plaintiff may apply for an adjudicator's determination to be enforced by entry as a judgment in accordance with this subpart.
- (3) The application—
  - (a) may be made to the District Court; and
  - (b) must be made in the manner provided by the rules of that court (if any).
- (4) Either before or immediately after making the application, the plaintiff must serve on the defendant—
  - (a) a copy of the application; and
  - (b) a statement setting out the consequences for the defendant if the defendant takes no steps in relation to the application.
- (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) if any conditions imposed by the adjudicator have been met; and
  - (b) after the date (if any) specified in the adjudicator's determination for compliance.

Section 73(1): repealed, on 1 December 2015, by section 50(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 73(2): replaced, on 1 December 2015, by section 50(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 73(3)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 73(5): replaced, on 1 December 2015, by section 50(3) of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### **74 Defendant may oppose entry as judgment**

- (1) If the defendant wishes to oppose the application under section 73, the defendant must, within 5 working days after the date on which the defendant is served a copy of the application, apply to the District Court for an order that entry of the adjudicator's determination as a judgment be refused.
- (2) The application for an order referred to in subsection (1) may be made only on the following grounds:
  - (a) that the amount payable under the adjudicator's determination has been paid to the plaintiff by the defendant;
  - (b) that the contract to which the adjudicator's determination relates is not a construction contract to which this Act applies;
  - (c) that a condition imposed by the adjudicator in his or her determination has not been met;
  - (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;
  - (e) that the date (if any) specified in the adjudicator's determination for compliance has not (yet) passed.
- (2A) Subsection (2)(d) applies only if the adjudicator's determination is a determination under section 48(1)(b) or (2).
- (3) If the District Court is satisfied that any of the grounds set out in subsection (2) applies, the District Court must—
  - (a) refuse the application under section 73 to enforce the adjudicator's determination by entry as a judgment; and
  - (b) make an order accordingly.
- (4) If the District Court is not satisfied that 1 or more of the grounds set out in subsection (2) applies, the District Court must—
  - (a) accept the application under section 73 to enforce the adjudicator's determination by entry as a judgment; and
  - (b) enter the adjudicator's determination as a judgment accordingly.

Section 74(1): amended, on 1 December 2015, by section 51(1) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 74(2)(d): inserted, on 1 December 2015, by section 51(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 74(2)(e): inserted, on 1 December 2015, by section 51(2) of the Construction Contracts Amendment Act 2015 (2015 No 92).

Section 74(2A): inserted, on 1 December 2015, by section 51(3) of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **75 Entry as judgment if defendant takes no steps**

If the defendant takes no steps within 5 working days after the date on which a copy of the application under section 73 to enforce the adjudicator's determination is served on the defendant, the District Court must, at the request of the plaintiff, enter the adjudicator's determination as a judgment as soon as practicable.

Section 75: amended, on 1 December 2015, by section 52 of the Construction Contracts Amendment Act 2015 (2015 No 92).

### *Enforcement of adjudicator's determination involving charging order in respect of construction site*

## **76 Enforcement of adjudicator's determination involving charging order in respect of construction site**

- (1) This section applies if an adjudicator has recorded in his or her determination the adjudicator's approval for the issue of a charging order in respect of a construction site.
- (2) If this section applies,—
  - (a) the plaintiff may, in the application under section 73, also apply for the issue of a charging order in respect of the construction site; and
  - (b) if the adjudicator's determination is entered as a judgment under section 74(4) or section 75, the Registrar of the District Court must immediately issue a charging order in respect of the construction site.

### *Miscellaneous*

## **77 Effect of entry of judgment**

To avoid doubt, an adjudicator's determination entered as a judgment may be enforced by execution in accordance with the District Court Rules 2014.

Section 77: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **78 Application of rules relating to charging orders**

To avoid doubt, the provisions of the District Court Rules 2014 relating to charging orders apply to charging orders issued in accordance with this Act.

Section 78: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## Part 5

### Miscellaneous provisions

#### **79 Proceedings for recovery of debt not affected by counterclaim, set-off, or cross-demand**

In any proceedings for the recovery of a debt under section 23 or section 24 or section 59, the court must not give effect to any counterclaim, set-off, or cross-demand raised by any party to those proceedings other than a set-off of a liquidated amount if—

- (a) judgment has been entered for that amount; or
- (b) there is not in fact any dispute between the parties in relation to the claim for that amount.

#### **80 Service of notices**

Any notice or any other document required to be served on, or given to, any person under this Act, or any regulation made under this Act, is sufficiently served if—

- (a) the notice or document is delivered to that person; or
- (b) the notice or document is left at that person's usual or last known place of residence or business in New Zealand; or
- (c) the notice or document is posted in a letter addressed to the person at that person's place of residence or business in New Zealand; or
- (d) the notice or document is sent in the manner (if any) prescribed in regulations made under this Act.

Section 80(d): amended, on 1 December 2015, by section 53 of the Construction Contracts Amendment Act 2015 (2015 No 92).

#### **81 Rules of court**

- (1) In addition to all other powers conferred by the District Court Act 2016, the Governor-General may, by Order in Council, make rules regulating the practice and procedure of the District Court in proceedings under this Act.
- (2) Rules may be made under subsection (1) only with the concurrence of—
  - (a) the Chief District Court Judge; and
  - (b) 2 or more members of the Rules Committee established under section 155 of the Senior Courts Act 2016 of whom at least 1 is a District Court Judge.
- (3) In the absence of any rules under this section, or in any situation not covered by any of those rules, the rules in relation to civil proceedings for the time being in force under the District Court Act 2016 apply, with all necessary modifications, to proceedings under this Act.



Section 81(1): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 81(2)(b): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 81(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **82 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations prescribing the form of a notice of acceptance may, for example, require that the notice—
  - (a) state that the adjudicator has accepted appointment as adjudicator:
  - (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:
  - (d) confirm that the adjudicator meets the eligibility criteria for adjudicators under section 34:
  - (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:
  - (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).

Section 82(2): inserted, on 1 December 2015, by section 54 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## **83 Chief executive may require adjudication information**

- (1) The chief executive may, for statistical or research purposes, 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.
- (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 domain; or

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

Section 83: inserted, on 1 December 2015, by section 55 of the Construction Contracts Amendment Act 2015 (2015 No 92).

## Reprints notes

### 1 *General*

This is a reprint of the Construction Contracts Act 2002 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Partnership Law Act 2019 (2019 No 53): section 86

Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12): Part 4

Contract and Commercial Law Act 2017 (2017 No 5): section 347

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(b)

Construction Contracts Amendment Act 2015 (2015 No 92)

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Limitation Act 2010 (2010 No 110): section 58

Weatheright Homes Resolution Services Act 2006 (2006 No 84): section 127(2)

Insolvency Act 2006 (2006 No 55): section 445

Relationships (Statutory References) Act 2005 (2005 No 3): section 7