

House of Representatives

Supplementary Order Paper

Tuesday, 22 September 2015

Construction Contracts Amendment Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper (**SOP**) amends the Construction Contracts Amendment Bill (and replaces SOP No 52)—

- to make provision in the Construction Contracts Act 2002 (the **principal Act**) for retentions (being money withheld by one party to a construction contract from money payable to another party to the contract as security for the performance of obligations under the contract) to be held on trust; and
- to make other minor and technical changes.

Clause 2 is revised to change the commencement date for the Bill and to provide that—

- most of the amendments in the Bill will come into force on 1 December 2015; and
- the amendments applying the principal Act to contracts for related services will come into force on 1 September 2016; and
- the amendments relating to retentions will come into force on 31 March 2017.

Part 1

Amendments to preliminary provisions

Clause 4 is amended to make amendments to section 4 of the principal Act to update the overview section to reflect changes made in this SOP and to make other minor changes.

Clause 5 is amended to reflect changes made in this SOP.

Clause 7 is revised to delete the transitional and savings provisions (which are being relocated to *new clauses 8AB and 8AC*).

Clause 8A(2) is revised to replace *new section 11(b)(iv)*. Section 11(b) of the principal Act lists provisions of a construction contract to which the principal Act does not apply. *New section 11(b)(iv)* currently refers to property management. The revised *new section 11(b)(iv)* refers generally to all services for the operation or management of a property that are not construction work and do not relate to construction work.

Clause 8AB is inserted to insert a *new section 11A*, which provides saving provisions for existing contracts in relation to the amendments in this Bill that come into force on 1 December 2015.

Clause 8AC is inserted to amend *new section 11A* (inserted by *clause 8AB*) to provide saving provisions for existing contracts in relation to the amendments in this Bill that come into force on 1 September 2016.

Part 2

Amendments to principal provisions

Payments

New clause 8AD amends section 13 of the principal Act. Section 13 makes conditional payment provisions in construction contracts ineffective. This amendment defines a conditional payment provision to include any provision in a construction contract that makes the payment of retention money conditional on anything other than the performance of the payee's obligations under the contract.

New clauses 8AE, 8AF, 8BA, and 8BB make minor changes that are consequential to other changes in this SOP and *clause 8B* of the Bill.

New clause 8BC inserts *new subpart 2A of Part 2* to—

- define retention money:
- require a party who withholds retention money to hold that money on trust:
- provide that the trust only ends when—
 - retention money is paid; or
 - the party to whom the money is payable agrees to give up their claim; or
 - the money ceases to be payable by law:
- make provision for proper accounting of retention money:
- make provision in relation to the investment of retention money and interest payable on retention money:
- prohibit provisions designed to delay payment of retention money:
- provide that any provision in a construction contract is void that is designed to avoid the application of the provisions relating to retentions.

Clause 8C, which amends section 19 of the principal Act, is replaced. The amendment clarifies that subpart 3 of Part 2 of the principal Act only applies to payment claims in relation to payments to which the contractor is entitled and expands the scope of the payment claims provisions to cover any type of payment under a construction contract for, or in relation to, construction work carried out by the contractor.

Clause 9 is amended and *new clauses 9B to 9D* inserted to make amendments that are consequential to the change to *clause 8C* and to make an amendment to section 20 of the principal Act similar to that made by *clause 9A* of the Bill.

Adjudication of disputes

New clause 10A is inserted to replace section 25(2) of the principal Act to revise the example of a dispute in relation to a construction contract to include a disagreement as to whether or not 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).

New clause 11A is inserted to amend section 27 of the principal Act to delete a reference to section 61, which is being repealed.

New clause 13AA is inserted to make a minor amendment that is consequential to *clause 16A* of the Bill.

New clause 17A is inserted to make minor amendments to section 45 of the principal Act that are consequential to the amendment made by *clause 16A*.

New clause 24A is inserted to amend section 71 of the principal Act to clarify that the additional rule for limitation periods contained in section 393(2) of the Building Act 2004 applies in relation to adjudications.

Review and enforcement of adjudicator's determination

Clause 29, which amends section 74 of the principal Act (which sets out the grounds on which a defendant may oppose the enforcement of an adjudicator's determination as a judgment), is amended to clarify that the new ground of change in circumstance inserted by *clause 29(2)* applies only where the adjudicator's determination is a determination about the rights and obligations of the parties under the contract (and not a determination about whether or not any of the parties are required to make a payment under the contract).

Part 3

Amendments to miscellaneous provisions

New section 82(2), inserted by *clause 30B*, is amended to clarify that the list of matters in *new section 82(2)(a) to (i)* that may be covered by regulations prescribing the form of a notice of acceptance is not exhaustive.

The *Schedule*, which contained transitional and savings provisions, is deleted consequential to the insertion of *new section 11A* by *new clause 8AB*, which contains savings provisions in relation to this Bill.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. The disclosure statement provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at [http://legislation.govt.nz/disclosure.aspx?type=sop &subtype=government&year=2015&no=106](http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2015&no=106)

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 21 November 2014 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

A copy of this regulatory impact statement can be found at—

- <http://www.dbh.govt.nz/construction-contracts-act>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

The Honourable Dr Nick Smith, in Committee, to propose the amendments shown in the following document.

Hon Dr Nick Smith

Construction Contracts Amendment Bill

Government Bill

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Part 2

Amendments to principal provisions

Payments

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Construction Contracts Amendment Act **2013**.

2 Commencement

~~This Act comes into force on **1 November 2014**.~~

2 Commencement

- (1) **Sections 6 and 8AC** come into force on **1 September 2016**.
- (2) **Sections 4(3) and 8BC** come into force on **31 March 2017**.
- (3) The rest of this Act comes into force on **1 December 2015**.

3 Principal Act

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

Part 1

Amendments to preliminary provisions

4 Section 4 amended (Overview)

- (1) In section 4(c) and (e), delete “progress”.
- (2) Replace section 4(d) with:
 - (d) default provisions relating to payments are set out in sections 15 to 18:
- (3) After section 4(d), insert:

- (da) provisions relating to retentions are set out in **sections 18A to 18I**;
- (4) Replace section 4(f) to (h) with:
- (f) provisions granting a party to a construction contract who is owed money a statutory right to suspend work until payment is made are set out in **section 24A**;
- (g) provisions relating to the adjudication of disputes are set out in ~~Part 3~~ sections 25 to 71;
- (h) provisions enabling an adjudicator's determination to be reviewed or enforced are set out in ~~Part 4~~ sections 71A to 78;

5 Section 5 amended (Interpretation)

- (1) ~~In section 5, repeal the definitions of **commercial construction contract**, **residential construction contract**, and **residential occupier**.~~
- (1) In section 5, repeal the definition of **residential construction contract**.
- (2) In section 5, definition of **construction contract**, replace paragraph (a) with:
- (a) means a contract for carrying out construction work; and
- (2A) In section 5, replace the definition of **construction site** with:
- construction site** means—
- (a) the land on which the claimant has been carrying out construction work under the relevant construction contract;
- (b) in relation to related services, ~~means~~ the land or premises that are the subject of the contract
- (3) In section 5, replace the definition of **defendant** with:
- defendant** means a party—
- (a) against whom an adjudication determination is made; and
- (b) against whom enforcement of the determination is sought
- (4) In section 5, replace the definitions of **plaintiff** and **progress payment** with:
- plaintiff** means a party—
- (a) in whose favour an adjudication determination is made; and
- (b) who seeks enforcement of the determination
- progress payment**—
- (a) means a payment for construction work carried out under a construction contract that is in the nature of an instalment (whether or not of equal value) of the contract price for the contract; and
- (b) includes any final payment under the contract; but
- (c) does not include an amount that is, or is in the nature of, a deposit under the contract
- (5) In section 5, definition of **working day**, replace paragraph (c) with:

- (c) for the purposes of sections 18, 22, **24A**, 33, 35 to ~~37~~ **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
- (6) In section 5, definition of **working day**, paragraph (d), replace “53” with “**71B**”.
- (7) In section 5, insert in their appropriate alphabetical order:
- chief executive** means the chief executive of the department responsible for the administration of this Act
- premises**, in relation to related services, includes intended premises
- related services** means construction work of the kind referred to in **section 6(1A)**

6 Section 6 amended (Meaning of construction work)

After section 6(1), insert:

- (1A) **Construction work** includes—
- (a) design or engineering work carried out in New Zealand in respect of work of the kind referred to in subsection (1)(a) to (d) and (f):
- (b) quantity surveying work carried out in New Zealand in respect of work of the kind referred to in subsection (1)(a) to (g).

7 Section 9 amended (When Act applies: general)

In section 9, replace “10 and 11” with “11 and **11A**”.

- (1) ~~In section 9, after “Subject to”, insert “**subsections (2) and (3)** and”.~~
- (2) ~~In section 9, insert as subsection (2):~~
- (2) ~~Despite subsection (1), this Act only applies to contracts for related services—~~
- ~~(a) entered into on or after **1 November 2015**; or~~
- ~~(b) renewed for a further term on or after **1 November 2015** (except that this Act has effect only in relation to obligations that are incurred or undertaken on or after that date).~~
- (3) ~~The Schedule contains transitional provisions relating to amendments made to this Act on **1 November 2014**.~~

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

Repeal section 10.

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

- (1) In section 11(b)(ii)(C), after “contract”, insert “; or”.
- (2) After section 11(b)(ii), insert:

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

8AB New section 11A inserted (Application of this Act: savings provisions relating to Construction Contracts Amendment Act 2013)

After section 11, insert:

11A Application of this Act: savings provisions relating to Construction Contracts Amendment Act 2013

The amendments made to this Act on **1 December 2015** by the Construction Contracts Amendment Act **2013** 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.

8AC Section 11A amended (Application of this Act: savings provisions relating to Construction Contracts Amendment Act 2013)

In **section 11A**, insert as **subsection (2)**:

(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.

Part 2

Amendments to principal provisions

Payments

8AD Section 13 amended (Conditional payment provisions ineffective)

- (1) In section 13(1)(b), delete “progress”.

- (2) In section 13(2), definition of **conditional payment provision of a construction contract**, after paragraph (c), insert:

(ca) that is of a kind described in **section 181(1)(a)**; or

8AE Subpart 2 heading in Part 2 replaced

In Part 2, replace the subpart 2 heading with:

Subpart 2—Payment provisions

8AF Cross-heading above section 14 amended

In the cross-heading above section 14, delete “*progress*”.

8B Section 14 amended (Parties free to agree on progress payment provisions in construction contract)

- (1) In the heading to section 14, delete “**progress**”.
- (2) In section 14(a), delete “progress”.
- (3) In section 14, insert as ~~subclause~~ subsection (2):
- (2) To avoid doubt, the parties to a construction contract may expressly agree to a single payment under **subsection (1)(a)**.

8BA Cross-heading above section 15 amended

In the cross-heading above section 15, delete “*progress*”.

8BB Section 18 amended (Due date for payment)

In section 18, replace “progress payment” with “payment (as that term is defined in section 19)”.

8BC New subpart 2A of Part 2 inserted

After section 18, insert:

Subpart 2A—Retention money

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.

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)**.

18C Trust over retention money

- (1) All retention money must be held on trust by party A, as trustee, for the benefit of party B.
- (2) Retention money 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.

18D Accounting

- (1) Party A must keep proper accounting records of all retention money held that—
 - (a) correctly record all dealings and transactions in relation to the money; and
 - (b) comply with generally accepted accounting principles; and
 - (c) are readily and properly auditable.
- (2) Party A must make accounting records of retention money available for inspection by party B at all reasonable times and without charge.
- (3) Regulations may further prescribe methods of accounting for retention money.

18E Use of retention money

- (1) Party A must not appropriate any retention money 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.

18F Investment of retention money

- (1) Retention money 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.

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 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 contract; or
 - (b) if the parties have not agreed a rate under the contract, at the rate or rates prescribed in regulations.

18H Protection of retention money

Retention money—

- (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)

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 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.

8C Section 19 amended (Interpretation)

In section 19, replace the definition of **claimed amount** with:

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

- (a) construction work carried out; or
- (b) liquidated damages under the contract; or
- (c) breach of a term implied into the contract under the Building Act 2004 or any other enactment

8C Section 19 amended (Interpretation)

- (1) In section 19, replace the definition of **claimed amount** with:
claimed amount means an amount of a payment, specified in a payment claim, that the payee claims to be due
- (2) In section 19, definition of **payee**, delete “progress”.
- (3) In section 19, after the definition of **payer**, insert:
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
- (4) In section 19, definition of **scheduled amount**, replace “progress” with “a”.

9 Section 20 amended (Payment claims)

- (1) In section 20(1), replace “each progress” with “a”.
- (2) Replace section 20(1)(b) with:
 - (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.
- (3) In section 20(2)(b) and (c), delete “progress”.
- (4) In section 20(2)(d), replace “indicate” with “state”.
- (5) In section 20(3), replace “If a payment claim is served on a residential occupier, it” with “A payment claim”.

9A Section 21 amended (Payment schedules)

In section 21(2)(c), replace “indicate” with “state”.

9B Section 22 amended (Liability for paying claimed amount)

In section 22, delete “progress”.

9C Section 23 amended (Consequences of not paying claimed amount where no payment schedule provided)

In section 23(1)(b), delete “progress”.

9D Section 24 amended (Consequences of not paying scheduled amount in manner indicated by payment schedule)

In section 24(1)(d), delete “progress”.

10 New subpart 4 of Part 2 inserted

After section 24, insert:

Subpart 4—Suspension of work**24A Suspension of construction work**

- (1) A party who carries out construction work under a construction contract (**party A**) has the right to suspend work under that contract if—
- (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 the Contractual Remedies Act 1979; or
 - (b) enable party B to exercise any rights that may otherwise have been available to party B under that Act as a direct consequence of party A exercising the right conferred by **subsection (1)**.
- (5) The right to suspend work under a construction contract ceases when party B pays the amount in full or complies with the adjudicator’s determination.

Compare: 2002 No 46 s 72

Adjudication of disputes

10A Section 25 amended (Right to refer disputes to adjudication)

Replace section 25(2) with:

- (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).

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

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

11A Section 27 amended (Effect of Part on civil proceedings)

In section 27(1), delete “and section 61(2)”.

12 Section 28 amended (How to initiate adjudication)

After section 28(2), insert:

- (3) A notice of adjudication must also set out prominently, in the prescribed form (if any),—
- (a) a statement of the respondent’s rights and obligations in the adjudication; and
 - (b) a brief explanation of the adjudication process.

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

Replace section 31 with:

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 ~~subsection (1)~~ 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.

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

13AA Section 32 amended (Owner who is not respondent is party to adjudication proceedings)

In section 32(2)(a), after “37,”, insert “**37A**.”

13A Section 33 amended (Selection of adjudicator)

Replace section 33(2)(b) with:

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

14 Section 35 amended (Appointment of adjudicator)

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

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

After section 35, insert:

35A Notice of acceptance

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

16 Section 37 amended (Response to adjudication claim)

(1) Replace section 37(1) with:

- (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) After section 37(3), insert:

(4AA) **Subsection (4)** applies if, before the end of the period referred to in **subsection (1)(a)**, the respondent requests additional time to serve a written response.

(4) For the purpose of **subsection (1)(c)**, an adjudicator—

- (a) must allow the respondent additional time to serve a written response if the adjudicator considers it necessary—
 - (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.

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

After section 37, insert:

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.

17 New sections 38A and 38B inserted

After section 38, insert:

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

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

17A Section 45 amended (Adjudicator’s determination: matters to be considered)

- (1) In section 45(c), after “36”, insert “and the claimant’s written reply (if any) referred to in **section 37A**”.
- (2) In section 45(d), after “37”, insert “and the respondent’s rejoinder (if any) referred to in **section 37A(4)(b)**”.

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

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

(ia) must be dated; and

- (1) In section 47(1)(b)(iii), delete “in a case where the adjudicator determines that a party to the adjudication is liable to make a payment,”.

19 Sections 52 to 55 repealed

Repeal sections 52 to 55.

20 Section 58 amended (Enforceability of adjudicator’s determination)

- (1) In section 58(2), replace “is not enforceable” with “is enforceable in accordance with **section 59A**”.
- (2) Repeal section 58(3).

21 New section 59A inserted (Consequence of not complying with adjudicator’s determination under section 48(1)(b) or (2))

After section 59, insert:

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

- (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).

22 Section 60 amended (Effect of review or other proceeding on adjudicator’s determination under section 48(1)(a))

In section 60 and the heading to section 60, delete “under section 48(1)(a)”.

23 Section 61 repealed (Consequence of not complying with adjudicator’s determination under section 48(1)(b) or (2))

Repeal section 61.

24 Sections 62 to 64 and 67 repealed

Repeal sections 62 to 64 and 67.

24A Section 71 amended (Application of other enactments to adjudications)

- (1) In section 71(2)(c), after “1993”, insert “; and”.

- (2) After section 71(2)(c), insert:

- (d) civil proceedings against a person for the purposes of section 393(2) of the Building Act 2004.

Review and enforcement of adjudicator’s determination

25 Part 4 heading replaced

Replace the Part 4 heading with:

**Part 4
Review and enforcement of adjudicator’s determination**

26 New subpart 1AA of Part 4 inserted

After the Part 4 heading, insert:

Subpart 1AA—Review of adjudicator’s determination

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

71A Owner who is not respondent may apply to District Court for review of adjudicator’s determination

- (1) An owner who is not a respondent may apply to a District Court for a review of—

- (a) an adjudicator's determination that the owner is jointly and severally liable with the respondent to make a payment to the claimant; and
 - (b) an adjudicator's approval for the issue of a charging order in respect of the construction site.
- (2) A District Court has the jurisdiction to hear and determine an application for review under this section despite any limits imposed on District Courts in their ordinary civil jurisdiction by sections 29 to 34 of the District Courts Act 1947.

Compare: 2002 No 46 s 52

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 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

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 a District Court in its civil jurisdiction.
- (2) On hearing the application for review, the District Court may—
- (a) quash the determination, and substitute for it any other determination that the adjudicator could have made in respect of the original proceedings; or
 - (b) refuse the application.
- (3) A 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

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

27 Subpart 1 of Part 4 repealed

Repeal subpart 1 of Part 4.

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

- (1) Repeal section 73(1).
- (2) Replace section 73(2) with:
 - (2) A plaintiff may apply for an adjudicator’s determination to be enforced by entry as a judgment in accordance with this subpart.
- (3) Replace section 73(5) with:
 - (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.

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

- (1) In section 74(1), replace “15” with “5”.
- (2) After section 74(2)(c), insert:
 - (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.
- (3) After section 74(2), insert:
 - (2A) **Subsection (2)(d)** applies only if the adjudicator’s determination is a determination under section 48(1)(b) or (2).

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

In section 75, replace “15” with “5”.

Part 3 Amendments to miscellaneous provisions

30A Section 80 amended (Service of notices)

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

30B Section 82 amended (Regulations)

In section 82, insert as subsection (2):

- (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).

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

After section 82, insert:

83 ~~Secretary~~ 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.

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

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

**Schedule
New Schedule inserted**

s 32

**Schedule
Transitional provision relating to the 2014 amendments**

s 7(3)

Transitional provision relating to 2014 amendments

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

- (a) the contract is renewed for a further term on or after **1 November 2014**; or
- (b) the parties agree that the amendments will apply.