BUILDING DISPUTES TRIBUNAL
TE TARAIPUUNURA MŌ NGĀ TAUPOHE WHARE

ADJUDICATION

Building | Construction | Infrastructure
An Authorised Nominating Authority under the Construction Contracts Act

www.buildingdisputestribunal.co.nz
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The Family Dispute Resolution Centre (FDR Centre) provides an effective forum for the settlement of a wide range of family and relationship disputes.

ABOUT US

BDT has significant experience in the avoidance, management, and resolution of building, construction, and infrastructure disputes throughout New Zealand.

BDT is also an Authorised Nominating Authority for the purpose of nominating adjudicators under the Construction Contracts Act.

Our extensive knowledge and experience of the design and implementation of dispute resolution processes enables us to develop a comprehensive understanding of the community’s needs and to constantly deliver sound and commercially relevant advice on dispute resolution procedures and options, and innovative and effective dispute resolution services.

We focus on informing and educating parties and their advisers about dispute resolution processes so that they may make informed decisions about the options that are available to them.

Our support team is approachable, accessible, and helpful. Those parties to disputes and/or their advisers who contact us seeking advice, tell us that they are grateful for the personal service and professional advice that our Registrars provide which demystifies the processes for them and helps them to achieve better and more effective results.

FIND OUT MORE

www.buildingdisputestribunal.co.nz
There are many reasons why we are the provider of choice for adjudications under the Construction Contracts Act:

- **BDT has unrivalled experience in administering adjudication services in New Zealand:** BDT has been delivering specialist fully administered end-to-end dispute resolution services to the building and construction industry since 1990 and has appointed adjudicators and administered adjudication proceedings in more than 900 cases under the Act.

- **Fair, prompt, and cost effective:** BDT is committed to resolving building and construction disputes fairly, promptly, and cost effectively. Fixed fee services for low value claims are available (claims under $50K subject to conditions).

- **24 hour appointment service and ongoing professional case management:** BDT’s experienced Registrars provide a highly efficient, comprehensive, and professional end-to-end case management and administration service. The Registrars help parties and their advisers understand the adjudication process and oversee and administer the adjudication process from the appointment of the adjudicator to delivery of the determination. This highly efficient registry service ensures certainty, consistency, and quality in the delivery of Building Disputes Tribunal’s adjudication service.

- **Highly skilled, experienced, and respected adjudicators:** The Tribunal’s adjudicators are selected to join our panel of adjudicators by invitation only. They are highly trained, skilled, experienced, and knowledgeable in construction law and practice, and are respected and recognised as leaders in construction dispute resolution in New Zealand and internationally.

- **Peer review:** every determination is subject to ‘scrutiny’ before being given to the parties. This unique quality assurance mechanism makes BDT’s adjudication service New Zealand’s most reliable adjudication system.

- **Resources:** BDT provides, free-of-charge, access to a wealth of resource material relevant to all of its processes, including guides, legislation, judgments, template forms and precedents, and Building Disputes Tribunal’s free online quarterly journal, BuildLaw.
WHAT IS ADJUDICATION?

Statutory adjudication under the Construction Contracts Act is the most commonly used dispute resolution process in New Zealand for resolving building and construction disputes, offering a unique, fast, and relatively straightforward process for resolving disputes that arise under construction contracts.

Under the Act, an adjudicator is appointed to make a decision as to the parties’ respective rights and obligations under a construction contract. That decision takes the form of a determination which is binding on the parties unless or until the dispute is finally determined by arbitration or by court proceedings, or resolved by agreement or mediation after the dispute is determined. In other words, an adjudicator’s determination is binding in the interim.

Adjudication is quick and cost effective with most disputes resolved in less than six weeks from the time the process is initiated. More often than not, although the determination is not final and binding, the parties will accept the adjudicator’s determination and not take any further steps to engage in any other dispute resolution process.

Where a party does not abide by the decision of the adjudicator, the adjudicator’s determination may also be enforced in the courts by entry as a judgment.

Whilst the Act permits the adjudicator to convene a conference or undertake an inspection, the adjudication process will typically be undertaken entirely on the documents.

The Act applies with very few exceptions to every construction contract that relates to the carrying out of construction work in New Zealand. Any party who has a dispute or difference with any other party to that contract can refer that dispute to adjudication and does not need to consult with the other party regarding the appointment of an adjudicator – the claimant can simply apply to BDT to make the appointment.

Adjudication can be used whether the construction contract is written or oral. A party may proceed to adjudication at any time regardless of what the contract might otherwise say.

* a reply is only permitted as of right if the relevant construction contract was entered into or renewed on or after 1 December 2015.
LOW VALUE CLAIM SCHEME: FIXED FEES

LOW VALUE CLAIMS – FIXED FEE SERVICE

BDT understands that the cost of having a building or construction dispute resolved, or uncertainty about those costs, prevents many people from recovering monies that they are properly entitled to be paid and reluctant payers often use that situation to their advantage. This is particularly so where the amount in dispute is relatively small by industry standards – claims for less than $50,000.00 (inclusive of GST) – where those payers assume that the payee will take no steps to recover the unpaid amount because the cost and bother of doing so outweighs the benefit.

To redress that situation, BDT provides a fully administered fixed fee adjudication service for Low Value Adjudication Claims (LVC’s) of limited complexity. This scheme is aimed at providing parties to construction disputes with certainty as to the cost of taking a dispute to adjudication so that parties can make informed and considered commercial decisions as to whether to proceed down the adjudication pathway. This unique service ensures that the cost of having a low value claim resolved by adjudication is not disproportionate to the amount in dispute.

Where the claim presented does not meet the criteria for the Low Value Claim Scheme it will proceed as a General Claim with fees charged on a time cost basis.

LOW VALUE CLAIM SCHEME: Fee Schedule

<table>
<thead>
<tr>
<th>Claim Value</th>
<th>Fee</th>
<th>Documents that may be filed in support of Claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>LVC5 ≤ $4,999.99</td>
<td>$1,500</td>
<td>Contract Documents together with 15 single sided A4 pages of submissions and evidence.</td>
</tr>
<tr>
<td>LVC10 $5,000.00 ≤ $9,999.99</td>
<td>$2,500</td>
<td>Contract Documents together with 15 single sided A4 pages of submissions and evidence.</td>
</tr>
<tr>
<td>LVC20 $10,000.00 ≤ $19,999.99</td>
<td>$3,750</td>
<td>Contract Documents together with 20 single sided A4 pages of submissions and evidence.</td>
</tr>
<tr>
<td>LVC30 $20,000.00 ≤ $29,999.99</td>
<td>$5,000</td>
<td>Contract Documents together with 30 single sided A4 pages of submissions and evidence.</td>
</tr>
<tr>
<td>LVC40 $30,000.00 ≤ $39,999.99</td>
<td>$6,250</td>
<td>Contract Documents together with 40 single sided A4 pages of submissions and evidence.</td>
</tr>
<tr>
<td>LVC50 $40,000.00 ≤ $49,999.99</td>
<td>$7,500</td>
<td>Contract Documents together with 50 single sided A4 pages of submissions and evidence.</td>
</tr>
</tbody>
</table>

No conference of the Parties or inspection of the subject matter of the dispute or any other thing related to the dispute is included in the fixed fee.

The low value claim scheme is limited to claims for a monetary amount and where there are three or less items in dispute in the Claim. For example, three variations claims, three items of defective work, one extension of time event and two variations etc.
RESOURCES

BDT provides access to a wealth of resource material relevant to all of its processes including:

- **Forms and Precedents:** You can find forms and precedents required to meet all of your obligations under the Construction Contracts Act, as well as any of our other dispute resolution processes, on our website.

  Our forms and precedents include templates for payment claims and payment schedules, notices to suspend works, notice of adjudication, and sample claims.

  Our library of forms and precedents is regularly updated to ensure these documents remain current and comply with any statutory amendments. We advise you to return to our website each time you wish to access any of these documents so that you can be sure that you are using the most up-to-date version of any of the documents.

- **Guides and Briefings:** BDT routinely published guides and briefings on its website and via its social media pages on LinkedIn and Facebook – follow us today to keep updated.

- **Judgments:** looking for judgments relevant to private dispute resolution processes? These can also be found on our website.

- **Legislation:** Links to relevant legislation.

BDT also publishes a free online quarterly journal, BuildLaw, in which we bring you a wide range of contributions written by leading construction lawyers, academics, and prominent dispute resolution professionals from various jurisdictions around the world.

Our resources are always developing and improving. We encourage you to connect with us by subscribing to BuildLaw and connecting with us via our social media pages to ensure you receive the latest news and resources we have to share.
Complimenting BDT’s Adjudication service, the Building Disputes Tribunal provides a full suite of dispute resolution options to help you with your building, construction, and infrastructure disputes.

Arbitration

BDT operates at the cutting edge of modern, commercial arbitration, providing fully administered arbitration services governed by its comprehensive suites of Arbitration Rules, including expedited procedures and access to fixed fee and fee capped services. BDT provides parties with the highest quality arbitration services at a realistic and known price.

Arb-Med

BDT has developed Arb-Med Rules for the resolution of disputes that are robust and certain, yet innovative in their commercial commonsense approach to the challenge of combining arbitration and mediation in a single unified process that ensures the principles of natural justice are observed and a just, final, and binding decision is made.

Mediation

BDT’s mediation service provides parties with a professional administered option to resolve their dispute consensually, confidentially, and relatively informally.

Our mediators have extensive knowledge and expertise in building and construction law which makes them best placed to facilitate the mediation of any construction dispute.

Expert Determination

Expert Determination is a simple means of binding dispute resolution. Unlike arbitration, Expert Determination is not governed by legislation.
Expert Determination is a consensual process by which parties to a contract agree to refer matters in dispute to an independent person to determine.

The principle attraction of Expert Determination is that it can provide a binding determination without involving many of the formalities that can beset arbitration and litigation. It also has the advantage of assisting in preserving business relationships where strictly adversarial proceedings may not.

It is most commonly used to resolve disputes during the course of a construction contract.

Early Neutral Evaluation

Early Neutral Evaluation is a consensual, confidential, and relatively informal process in which parties to a dispute use the services of an independent, neutral evaluator to provide a non-binding evaluation of the facts, evidence, and legal merits of the matters in dispute.

Early Neutral Evaluation allows an extraordinary amount of flexibility and informality that blends the advantages of a judicial settlement conference, mediation, and independent expert determination of the dispute and allows the parties to effectively choose their own ‘judge’.

The process is specifically designed for disputes which are already in litigation or arbitration. Generally, all types of disputes are suitable for Early Neutral Evaluation provided that the parties and their representatives are committed to the prompt and cost effective resolution of the dispute and they are prepared and committed to participating in the process in good faith.