

# BUILDING DISPUTES TRIBUNAL: BRIEFING

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BUILDING DISPUTES TRIBUNAL  
TE TĀHĀPUNUNGA MĀO NĀGA TAUTOHE WHARE

## Construction Contracts – what are they and how is it changing?

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A construction contract means a contract for carrying out construction work as defined in section 6 of the Construction Contracts Act 2002 (the **Act**), and includes 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.

A construction contract may be written or oral, or partly written and partly oral (section 9(c)).

Presently the definition of construction work includes, *inter alia*, the construction, erection, installation, carrying out, alteration, repair, restoration, maintenance, extension, demolition, removal or dismantling of any building or structure forming or to form part of land, including roads, aircraft runways, wharfs, docks, railways, cableways, canals, waterways, pipelines, reservoirs, services reticulation and fittings installation, land drainage and coast protection, certain external or internal cleaning of buildings and structures, any operation that forms an integral part of, or is preparatory to, or is for rendering complete those works, foundations and the erection of scaffolding and cranes. The supply of prefabricated customised components for any building or structure is also caught (section 6).

From **1 September 2016**, the definition of 'construction work' will include design, engineering and quantity surveying work in respect of new contracts entered into after this date and to pre-existing contracts which are renewed after this date.

### **Construction contracts entered into before 1 December 2015**

For construction contracts entered into before 1 December 2015, the Act differentiates between residential and commercial construction contracts to the extent that different procedures apply for making and giving notice in relation to progress payments, giving notice of adjudication, suspension of works and the issue of charging orders.

#### *Commercial Construction Contracts*

A commercial construction contract means a construction contract for carrying out construction work in which none of the parties occupies or intends to occupy, the premises that are the subject of the construction contract wholly or mainly a residence.

#### *Residential Construction Contracts*

A residential construction contract is a construction contract in which one of the parties is an individual who occupies, or intends to occupy, the premises that are the subject of the

construction contract wholly or mainly as a residence.

Compliance with the notice requirements for residential construction contracts is mandatory and failure to comply will result in payment claims and a Notice of Adjudication being invalid for the purpose of the Act.

### **Construction contracts entered into or renewed on or after 1 December 2015**

For construction contracts entered into on or after 1 December 2015 most distinctions between residential and commercial construction contracts have been removed with the exception of charging orders and the new retentions regime. Residential contractors can now benefit fully from the Act's default payment provisions and the right to suspend work for non-payment or non-compliance with adjudicator's determinations.

The most significant change from a contractor's perspective is the requirement that all payment claims served under those new, or renewed contracts, must now provide a written outline of the process for responding to the payment claim and an explanation of the consequences of not responding and not paying the claimed amount or the scheduled amount in full. The written outline and explanation must be in Form 1 as prescribed by the Construction Contracts Amendment Regulations 2015 – the form is different to the form in the old Regulations. If a claim for payment under a new, or renewed contract entered into after 1 December 2015 is not accompanied by the new Form 1 it will not be a valid payment claim for the purposes of the Act.

To download a template payment claim in respect of a construction contract entered into or renewed on or after 1 December 2015 [click here](#). Please note this form is also valid for payment claims in respect of construction contracts entered into before 1 December 2015.

A notice of adjudication must set out all the information in Form 2 of the Construction Contracts Act Regulations 2015. Once again, the text of the new Form 2 is different to the old form.

To download a template for a notice of adjudication in respect of a construction contract entered into after 1 December 2015 [click here](#). Please note this template is also valid for adjudication claims in respect of construction contracts entered into before 1 December 2015.

Parties to a construction contract entered into before 1 December 2015 may agree that the amendments made to the Act by the Construction Contracts Amendment Act 2015 will apply to that construction contract.

**PLEASE NOTE**  
PAYMENT CLAIMS AND NOTICES OF  
ADJUDICATION IN THE NEW FORM WILL  
BE VALID FOR THE PURPOSES OF  
CONSTRUCTION CONTRACTS  
ENTERED INTO OR RENEWED BEFORE  
1 DECEMBER 2015

### **Construction contracts entered into after 1 September 2016**

From 1 September 2016, the definition of 'construction work' will include design, engineering and quantity surveying work (**related services**) in respect of new contracts entered into after this date and to pre-existing contracts which are renewed after this date.

Parties may agree that the provisions of the Construction Contracts Amendment Act 2015 will apply to contracts for related services entered into before 1 September 2016.

**BDT  
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This briefing is only intended to provide readers with an overview summary of the subject matter. It is not intended to be comprehensive or a substitute for independent legal advice.

For further information or enquiries as to Building Disputes Tribunal's services, please contact us via our [online](#) contact form or by email to [registrar@buildingdisputestribunal.co.nz](mailto:registrar@buildingdisputestribunal.co.nz).  
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