

Maintaining smooth building procedures

The Construction Contracts Act provides a simple process for how and when payments are due for construction work. By following the processes outlined in the Act, you will avoid timely and costly disputes and maintain crucial cash flow.

Construction work covers most work that might be carried out in building, altering or maintaining a house or commercial buildings.

Payment claims

When entering into a construction contract you can either negotiate the terms of payment as a part of the contract, or rely on the default payment provisions in the Act. To ensure they get paid and avoid disputes, contractors will need to issue a valid payment claim under the Act.

A valid payment claim must:

- Be in writing.
- Include sufficient details to identify the construction contract to which it relates.
- Identify the construction work and relevant period.
- State the amount claimed and provide a due date for payment.
- State how the amount was calculated.
- State that the payment claim is made under the Construction Contracts Act 2002.



LEGAL MATTERS

ALAN KNOWSLEY

RAINEY COLLINS LAWYERS

If the payment claim is made on a residential occupier, it must be accompanied by a written notice outlining the process for responding to the claim and the consequences of not responding if payment in full is not made.

Disputing payment

Once a valid payment claim has been served, a party has 20 working days to pay the amount or, if it disputes the amount, issue a payment schedule to the contractor.

A payment schedule must:

- Be in writing.
 - Identify the payment claim to which it relates.
 - State the amount the party is willing to pay.
- If the scheduled amount is less than the payment claim, the payment schedule must also state:
- How the party calculated the scheduled amount.
 - Why there is a difference between the amount claimed and the scheduled amount.

■ The party's reason for withholding payment.

If the payment claim is not paid in full, or a payment schedule is not issued or is invalid, the contractor can enforce the amount claimed as a debt due.

Work can be suspended only if it is agreed in the contract, or if it is a commercial construction contract.

Resolving disputes

Parties in a dispute over the construction contract can refer the dispute to adjudication. An adjudicator's decision is binding and is enforceable as a court judgment.

Adjudication is a fast-track resolution process. However, nothing in the Act stops a party from filing a claim in the courts or for arbitration of the dispute.

Any party to the construction contract may initiate the adjudication process by serving a written notice on the other person.

Construction contracts and work can be complex and involve large sums of money. It is often prudent to obtain legal advice to ensure claims and schedules comply with the Act, and to ensure you avoid disputes.

■ Column courtesy of Rainey Collins Lawyers, 0800 733484. Email aknowsley@raineycollins.co.nz.

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