

TRADIE LAW FACT SHEET #25

DEALING WITH DISPUTES



Construction Contracts – Adjudication

OVERVIEW

Disputes are common in the construction industry. Allegations of poor workmanship and contractual breaches often prevent the timely payment of invoices, which is one of the biggest issues contractors face.

Fortunately, the Construction Contracts Act 2002 (“the Act”) provides a quick and cost-effective process by which construction disputes can be resolved: **adjudication**.

Does the Act apply to me?

The Act applies to construction contracts, these are contracts for carrying out construction work.

“Construction work” is defined very broadly and even includes design, engineering and quantity surveying work.

The complete list of work that falls within the definition of “construction work” can be found [here](#).

What is adjudication?

Adjudication is a process for resolving construction disputes. It is a less expensive and faster alternative to arbitration or court, both of which are often time-consuming and cost-prohibitive.

Any party to a construction contract has the right to refer a dispute to adjudication and can, except in limited circumstances, exercise that right even if the dispute is already the subject of separate proceedings in a court or tribunal.

What types of disputes can be dealt with at adjudication?

Most disputes that arise under a construction contract can be referred to adjudication.

Common examples of disputes that may be appropriate for adjudication are disagreements between parties to a construction contract about:

1. whether an amount is payable under the contract (for example, a **payment claim** (see our Factsheet #4 for more information about payment claims); or

2. the reasons given for non-payment under a contract (for example, in a **payment schedule** (see our Factsheet #21 for more information about payment schedules); or
3. whether there has been a breach of a term of the contract.

How do I refer a dispute to adjudication?

Adjudication can be initiated by serving a written notice of your intention to refer a dispute to adjudication on the party with which you have the dispute (also called a **notice of adjudication**).

The **notice of adjudication** must state:

1. the date of the notice;
2. the nature and a brief description of the dispute and the parties involved;
3. details of where and when the dispute arose;
4. the relief or remedy you are seeking;
5. whether you are seeking approval for the issue of a charging order under section 29 of the Act;
6. whether you are seeking a determination that an owner (who is not the other party to the dispute) should also be liable to make payment to you;
7. details sufficient to identify the construction contract to which the dispute relates (including the names and addresses for service of the parties to the contract); and
8. a statement of the other party's rights and obligations in the adjudication and a brief explanation of the adjudication process.

A template notice of adjudication developed by the Building Disputes Tribunal, which you can use free of charge, can be found [here](#).

What happens next?

After serving the notice of adjudication on the other party, an adjudicator needs to be appointed. There are three ways to do this:

1. Agree upon an adjudicator with the other party (this should be done as soon as possible after the notice of adjudication has been served); or
2. Agree upon a nominating organisation to select the adjudicator if you cannot agree with the other party on an adjudicator between yourselves (this should also be done as soon as possible after the notice of adjudication is served); or
3. If options 1 and 2 above aren't possible, you can apply to an authorised nominating authority (such as the [Building Disputes Tribunal](#)) to select an adjudicator.

You must refer the dispute to the adjudicator (the **adjudication claim**) within 5 working days of the adjudicator accepting the request for their appointment. The adjudication claim:

1. must specify the nature of the dispute and be accompanied by a copy of the notice of adjudication; and
2. may be accompanied by any supporting documents.

A copy of the adjudication claim and any accompanying documents must be served on every other party to the adjudication before or immediately after they are served on the adjudicator.

After receiving the adjudication claim, the other party will have 5 working days to provide you and the adjudicator with a written response. You will then have a further 5 working days to serve on the other party and the adjudicator any reply to that written response you may have.

The adjudicator will then consider the documents each party has submitted and issue a written decision (called a "**determination**") on the dispute within 20 working days from the date of the last submission. That determination will be binding on you and the other party.

If you would like further advice on adjudication or need help resolving a construction dispute, get in touch so we can help.

Contact:

E **helpdesk@tradielaw.co.nz**

W **www.tradielaw.co.nz/tradie-law/contact/**

One of our team will be in touch to assist you within 24 hours.