

## Form 2 – Construction Contracts Regulations 2003

### Information that must be set out in notice of adjudication served on residential occupier

#### Important notice

You have been served with a notice of adjudication under the Construction Contracts Act 2002 (the **Act**). You have certain rights and obligations under the Act in relation to the notice of adjudication.

This notice of adjudication means that the person who served the notice (the **claimant**) intends to refer a matter in dispute in relation to a construction contract between you and that person for adjudication under the Act. As the respondent, you have certain rights and strictly limited times in which to respond.

This notice briefly explains the adjudication process under the Act and provides a statement of your rights and obligations in the adjudication. It summarises the effect of the Act, but is not a substitute for the Act. If you want more detailed information about exactly what the Act says, you should consult the Act or a lawyer.

**Important: If you do not understand this information or if you want further advice about how to respond to the notice of adjudication, or if you do not think you are a party to a construction contract, you should consider getting legal advice on the matter immediately.**

#### Adjudication process

The adjudication process may be used for any dispute arising under a construction contract, including residential construction contracts. If your dispute does not arise under a construction contract, the adjudicator does not have jurisdiction to hear it. If you think that your dispute does not arise under a construction contract, you should tell the adjudicator and the other parties at once and consider consulting a lawyer immediately.

The adjudication is intended to give a quick determination of the dispute from an adjudicator. If an adjudicator determines that you are, or any other party is, liable to pay money under the contract, that determination is binding and enforceable until the dispute has been finally determined through court or arbitration proceedings. Any other determination by the adjudicator about the rights and obligations of the parties is not enforceable as such, but the parties may bring proceedings in court to enforce their contractual rights.

You or the other parties to a construction contract can still submit your dispute to the courts, arbitration, mediation, or any other dispute resolution procedures, as well as to adjudication. When a court has made a judgment, that judgment will either stop an adjudication that is under way or override the effect of an adjudicator making a determination or the claimant enforcing any monetary determination against you.

Unless extended by written agreement between the parties, an adjudicator's role is limited to determining the following:

- if the claimant is claiming money, whether or not any of the parties to the adjudication are liable to make a payment under the contract; and
- any questions in dispute about the parties' rights and obligations under the contract; and
- any other matters that are ancillary or consequential to the determination.

An adjudicator has 20 working days to determine a dispute after the end of the period during which the parties may serve a written response to the adjudication claim. However, the period during which the adjudicator must determine the dispute may be extended to 30 working days if the adjudicator considers that further time is reasonably required, or any further time period that the parties may agree upon. For the purposes of this form **working day** does not include Saturdays, Sundays, any day during 24 December to 5 January inclusive, national holidays, or the anniversary of the relevant province.

If an adjudicator gives you notice that an amount is payable by you, you must pay it within 2 working days or within any longer time specified by the adjudicator. If you do not, the claimant may recover that amount as a debt from you through the courts.

**It is important that you read the following statement of your rights and obligations and act promptly, and within the staged times, to exercise your rights.**

### **Your rights and obligations in adjudication**

#### *Choice of adjudicator*

The claimant may contact you to discuss the choice of adjudicator for the dispute and you may agree between yourselves as to who that person should be. If the person you have agreed upon has already indicated that he or she is unwilling or unable to act, you and the claimant may agree on another choice of adjudicator. If you and the claimant do not agree on an adjudicator, you may together agree on a nominating body to select an adjudicator. That nominating body may be any person, company, or other body (whether incorporated or not) who nominates adjudicators. If you have not agreed on a nominating body and no agreed adjudicator is willing and able to act within 5 working days of you receiving the notice of adjudication, then the claimant may request any nominating authority that has been authorised by the Minister of Commerce under the Act (an **authorised nominating authority**) to nominate an adjudicator.

Any agreement about the choice of an adjudicator or a nominating body or an authorised nominating authority that was made before the dispute arose is not binding on you or the other parties to the adjudication.

The adjudicator may **not** be someone who is a party to the construction contract. If the person asked to act as an adjudicator has a conflict of interest (whether financial or

otherwise), he or she must disclose it to you and that person may not act as an adjudicator unless all of the parties to the adjudication, including you, agree.

If a person agrees to act as an adjudicator, he or she must serve a notice of acceptance on you. The notice must confirm that the person has no undisclosed conflict of interest, or else it will have no effect.

#### *Adjudication claim and your response*

Once an adjudicator has been appointed, the claimant must, within 5 working days of receiving the adjudicator's notice of acceptance, serve an adjudication claim on you. This claim must specify the nature or the grounds of the dispute and, to the extent that it remains relevant, be accompanied by a copy of the notice of adjudication. It may be accompanied by any other documents.

You may serve a written response to the adjudication claim on the adjudicator. You have 5 working days after you receive the adjudication claim to do this, or any further time that you and the other parties to the adjudication agree or the adjudicator allows. If you do not serve a written response within that time, the adjudicator may draw any inferences from that failure that he or she thinks fit and may determine the dispute on the basis of the information that is available to him or her. Your response may be accompanied by any other documents that you consider useful. You must serve a copy of the response and any accompanying documents on the claimant and any other party to the adjudication either before or immediately after they are served on the adjudicator. If you want to argue the adjudication claim, it is essential that you respond promptly, setting out your side of the case.

You may serve your response by delivering it to the adjudicator and claimant, or by leaving it at their usual or last known place of residence or business in New Zealand, or by posting it in a letter addressed to them there. You may also serve your response by fax or e-mail.

#### *Adjudication proceedings*

Adjudication must act independently, impartially, and in a timely manner. They must avoid incurring unnecessary expense and comply with the principles of natural justice. If they become aware of any conflict of interest, they must disclose it to the parties to the adjudication and resign unless those parties agree otherwise. Within these requirements, an adjudicator may conduct the adjudication in any manner he or she thinks fit. An adjudicator may—

- request further written submissions from the parties to the adjudication, but must give the relevant parties an opportunity to comment on those submissions:
- request the parties to provide copies of any documents that he or she may reasonably require:
- set deadlines for further submissions and comments by the parties:
- appoint an expert adviser to report on specific issues (as long as the parties are notified before the appointment is made):
- call a conference of the parties:

- carry out an inspection of any construction work or any other thing to which the dispute relates:
- request the parties to do any other thing during the course of an adjudication that he or she considers may reasonably be required to enable the effective and complete determination of the questions that have arisen in the adjudication:
- issue any other reasonable directions that relate to the conduct of the adjudication.

### *Confidentiality*

Any information disclosed in the course of the adjudication for the purposes of the adjudication and any statement, admission, or document created or made for the purposes of an adjudication is confidential, to the extent it is not already publicly known. Neither the adjudicator nor any party to the dispute may disclose the information except—

- with the consent of the relevant party; or
- to the extent that disclosure is necessary for the purposes of, or in connection with, the adjudication or the enforcement of the adjudicator's determination; or
- 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
- 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.

### *Representation*

You and the other parties may be represented by legal or other representatives, subject to the adjudicator's power to limit the number of representatives present at a conference to allow for the efficient conduct of proceedings.

### *Consolidation of adjudication proceedings*

If 2 or more adjudication proceedings are pending, the adjudicator may, with your written consent and the consent of all the other parties to those proceedings, determine all those adjudication proceedings at that same time.

### *Liability of adjudicators and expert advisers*

Neither adjudicators nor any expert advisers they appoint are under any liability to you for anything done or omitted in that capacity unless it was done or omitted in bad faith.

### *Adjudicator's determination*

The determination of the questions in dispute must be in the written form prescribed by the Construction Contracts Regulations 2003 and must contain the reasons for the determination. The adjudicator must give a copy of the determination to you as soon as practicable after making it. If the adjudicator determines that a party is liable to pay money, the adjudicator must also determine the amount payable, when it is payable, and whether any conditions must be met before it is payable.

*Costs of adjudication proceedings*

An adjudicator may determine that costs and expenses must be met by any of the parties to the adjudication if the adjudicator considers that the party has caused those costs and expenses to be incurred unnecessarily by bad faith or by allegations or objections by that party that are without substantial merit. Otherwise, the parties to the adjudication must meet their own costs and expenses.

An adjudicator's fees must be borne equally by the parties to the adjudication, unless the adjudicator determines that the claimant's adjudication claim or your response was without substantial merit or that one of you acted in a contemptuous or improper manner during the adjudication. Those fees are payable only if the adjudicator determines the dispute within the time allowed. An adjudicator may require payment before communicating his or her determination on a dispute to you.

Any agreement made before the dispute arose about how the costs and expenses in adjudication proceedings are to be apportioned is not binding.

If an adjudication claim is withdrawn or terminated or the dispute between the parties is resolved, an adjudicator is entitled to be paid the fees and expenses incurred in the adjudication to that date.