



CONSTRUCTION CONTRACTS ACT REVIEW SUBMISSION FORM

Name: Beverley McRae

Position: CEO

Organisation: The New Zealand Institute of architects Incorporated

Contact details: PO Box 2516, Auckland 1140

Please tick if you are happy for us to contact you about your submission.

This submission form is to help you make a submission on the review of the Construction Contracts Act 2002. Please fill out the questions that are relevant to you. You can also send additional feedback if you choose.

Please return this form by **Thursday 16 December 2010**.

Post or courier

Department of Building and Housing
Level 6, 86 Customhouse Quay
PO Box 10-729
Wellington 6143
Attn: Construction Contracts Act Review Team

Email

constructioncontracts@dbh.govt.nz

Fax

(04) 494 0290 (please put "Construction Contracts Act Review" in the subject line).

Official Information Act 1982

Please note that all written responses will be public information. Responses may be the subject of requests for information under the Official Information Act 1982 (the OIA). The OIA specifies information is available on request unless there are grounds for withholding specific information, such as the information is commercially sensitive or personal. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.

Thank you for your contribution.



QUESTIONS

Section 1: residential construction contracts

Issues

1. Do you agree that residential consumers experience problems resolving disputes under the Act and managing progress payments?

No Comment

2. Do you agree that residential contractors experience problems resolving disputes under the Act?

No Comment

3. If you do agree, why do you think these problems arise? If not, why not?

No Comment

4. Are there any issues we haven't identified? If so, what are they?

No Comment

Proposals

5. Do you agree that the limitation in how the Act applies to residential construction contracts should be removed? If so, why? If not, why not?

No Comment

6. Do you agree the requirement to give a notice with a payment claim should be extended to all kinds of construction contracts? If so, why? If not, why not?

No Comment



7. Does the proposal have any advantages or disadvantages for you? If so, what are they?

No Comment

8. Does the proposal to remove the limitation in how the Act applies to residential construction contracts have any financial implications for you? If so, what are they?

No Comment

Section 2: enforcement of orders

Issues

9. Do you agree that enforcing adjudication orders under the Act is problematic?

No Comment

10. If you do agree, why do you think these problems arise? If not, why not?

No Comment

11. Are there any issues we haven't identified? If so, what are they?

No Comment

Proposals

12. Do you think there is a better option for enforcing adjudication orders?

No Comment

13. If you think there is a better option, what is it and why do you think it is better?

No Comment



14. Do you agree disputes about residential construction contracts and rights and obligations under contract should have the same enforcement options? If so, why? If not, why not?

No Comment

15. Do the proposals to improve enforcement of adjudication orders have any financial implications for you? If so, what are they?

No Comment

16. Do the proposals have any advantages or disadvantages for you? If so, what are they?

No Comment

Section 3: appeal rights

Issues

17. Are limited appeal rights against adjudication decisions made under the Act a problem for you?

No Comment

18. If you do agree, why do you think these problems arise? If not, why not?

No Comment

19. Do you think the current options for appealing adjudication orders under the Act are sufficient? If so, why? If not, why not?

No Comment



20. Do you think the actual problem is that current appeal options aren't clear enough? If so, why? If not, why not?

No Comment

21. Are there any issues we haven't identified? If so, what are they?

No Comment

Proposals

22. Do you agree adjudication orders should be able to be appealed? If so, why? If not, why not?

No Comment

23. If you do agree, do you think appeals should be allowed in cases where the decision was wrong, the process was unfair or both?

No Comment

24. Do you think there are other ways of ensuring people get correct decisions, other than an express appeal right? If so, what are they?

No Comment

25. Do the proposals to improve appeal rights have any financial implications for you? If so, what are they?

No Comment

26. Do the proposals have any advantages or disadvantages for you? If so, what are they?

No Comment



Section 4: confidentiality of orders
Issues
27. Is the confidentiality of adjudication orders a problem for you? No Comment
28. If you do agree, why do you think these problems arise? If not, why not? No Comment
29. If adjudication orders were publicly released, would this impact on your decision to take a dispute to adjudication under the Act? No Comment
30. Are there any issues we haven't identified? If so, what are they? No Comment
Proposal
31. Do you agree the requirement for adjudication orders to be kept confidential should be removed? If so, why? If not, why not? No Comment
32. If adjudication orders are no longer confidential, do you think they should be actively published and searchable, or able to be obtained on request? No Comment



33. Does the proposal to improve transparency of adjudication orders have any financial implications for you? If so, what are they?

No Comment

34. Do the proposals have any advantages or disadvantages for you? If so, what are they?

No Comment

Section 5: related goods and services

Issues

35. Do you think there is a problem with excluding related goods and services from the Act altogether?

In the case of professional services, NO.

36. If you do agree, why do you think these problems arise? If not, why not?

NO, we do not agree.

37. Do you see a difficulty with extending claims in contract to a wider group of suppliers (including designers, material suppliers and subcontractors) without extending jurisdiction to consider claims in tort?

YES, we do see a difficulty. In general, consultants do not wish to be included in the CCA. The current focus of the CCA is on "facilitating payment". Professional services contracts between a client and an architect have their own provisions for dealing with contractual issues. Widening claims to contracts outside this professional services contract would introduce unnecessary complexity and cost.

38. Are there any issues we haven't identified? If so, what are they?

No comment



Proposals
<p>39. Do you agree related goods and services should continue to be excluded from the Act's payment provisions? If so, why? If not, why not?</p> <p>YES. We agree to continued exclusion. Professional services contracts contain sufficient measures to facilitate timely payment of fees and dispute resolution provision in the case of non-payment of fees.</p>
<p>40. Do you agree parties to related goods and services contracts should be allowed to use the adjudication process in the Act? If so, why? If not, why not?</p> <p>YES. Related services should be able to use the same adjudication process, but consultant contracts will specify that process in any case. The aim is to facilitate contractor cashflow, the resolution of consultant payment disputes and to provide security of payment.</p>
<p>41. Are there any issues we haven't identified? If so, what are they?</p> <p>NO</p>
<p>42. Do the proposals have any financial implications for you? If so, what are they?</p> <p>NO</p>
<p>43. Do the proposals have any advantages or disadvantages for you? If so, what are they?</p> <p>NO</p>



Section 6: other issues

Issues

44. Have you experienced any other issues related to:

- the payment provisions under the Act
- the adjudication process under the Act
- the remedies for non-payment under the Act?

No comment

45. If you have experienced other issues, what are they and how have they affected you as either a consumer or contractor?

No comment