

Office of the Minister for Building and Construction

Cabinet Economic Growth and Infrastructure Committee

Review of the Construction Contracts Act 2002: Proposals for change

Proposal

- 1 I propose a set of amendments be made to the Construction Contracts Act 2002 to make the existing adjudication process a faster, more cost-effective and efficient resolution option for people with disputes under construction contracts.

Executive summary

- 2 This paper seeks agreement to a package of amendments to the Construction Contracts Act 2002 (the Act). These amendments seek to address issues with the adjudication process prescribed under the Act, in particular:
 - the unclear and limited application of the Act to different kinds of contracts and disputes
 - the costly and time consuming options for enforcing determinations
 - improving processes associated with adjudication, to give all parties a fair go.
- 3 The key proposals include:
 - removing the distinction between how the Act applies to residential and commercial construction contracts
 - removing the distinction between enforcement of payment disputes and rights and obligations disputes
 - speed up enforcement processes by reducing the amount of time a defendant has to oppose an application to have a determination entered as a judgement
 - clarify procedural matters, such as how to seek time extensions to respond to adjudication claims
 - clarify how determinations can be appealed, contested and reviewed.
- 4 These changes are important in the context of recent Cabinet agreement to changes to the Building Act 2004, which aim to clarify the legal roles and accountabilities of different parties for building work [CAB Min (10) 27/10 refers]. An improved adjudication process will support consumers to hold contractors to account in practice, and contractors to obtain payment for the work they do.

Table 1: Proposals to create fast, cost-effective and efficient adjudication

Issue	Key proposals	Effects
<p>Unclear application and limited scope of the Act to different kinds of contracts and disputes.</p>	<p>Remove the distinction between residential and commercial contracts.</p> <p>Widen the definition of construction work so people with disputes under design, engineering and quantity surveying contracts can use the adjudication process.</p> <p>Enable determinations about rights and obligations disputes to be enforced.</p>	<p>Scope of the Act widened to include a wider range of disputes.</p> <p>The kinds of building disputes that can be resolved using the adjudication process are clear.</p> <p>Clear incentives for contracting parties to use appropriate dispute resolution mechanisms.</p> <p>Reduces confusion about how the Act applies to different kinds of contracts and disputes.</p>
<p>Enforcement of adjudication determinations is time-consuming and costly.</p>	<p>Reduce the amount of time a defendant has to oppose an application to have a determination entered as a judgement to 5 days.</p> <p>Create regulations to prescribe appropriate qualifications, expertise and experience requirements for adjudicators.</p>	<p>Determinations can be enforced more quickly so work can resume, compensation can be obtained or outstanding payments recovered.</p> <p>Adjudicators are competent and transparent to the parties involved.</p>
<p>Adjudication can be perceived as unfair by residential consumers and contractors.</p>	<p>Re-draft existing notices given to residential consumers in plain English so their rights and obligations are clear.</p> <p>Clarify how respondents may seek a time extension for preparing a response to a claim.</p> <p>Require adjudicators to hold a pre-adjudication conference.</p> <p>Clarify how determinations can be appealed, contested or re-heard.</p>	<p>Parties to adjudication are treated fairly and have the right to have their say.</p> <p>Consumers and contractors understand their rights and obligations, and how the adjudication process under the Act works.</p>

Background

- 5 The Construction Contracts Act 2002 (the Act) creates default progress payment provisions for construction contracts, provides an adjudication framework for

people with disputes under construction contracts and provides remedies for recovering payments under construction contracts.

- 6 Submissions on the recent Building Act 2004 review supported the adjudication process under the Act as being a good option for resolving a range of building disputes.
- 7 Despite this support, there are discrete issues that can make it difficult for some parties to resolve disputes under the Act, particularly parties to residential contracts and parties who are in dispute over quality of work or rights and obligations under contracts.
- 8 Cabinet directed the Department of Building and Housing to review the Act with a view to improving its application to both residential and commercial construction disputes, and to report back to Cabinet Economic Growth and Infrastructure Committee by 31 March 2011 [CAB Min (10) 27/10 refers].
- 9 It is also timely to review whether the Act is effective in achieving its original purposes of improving cash flow in the construction industry, providing for the speedy resolution of disputes and providing remedies for the recovery of payments.
- 10 In October 2010 Cabinet agreed to the release of a discussion document that canvassed issues with, and proposals to amend, the Act [EGI (10) 25/10 refers]. Public consultation was carried out between 4 November and 16 December 2010.
- 11 Details of the results of public consultation can be found in paragraphs 85 to 92 of this paper.

Outcomes: a new approach to building dispute resolution

- 12 The proposals outlined in this paper will help make the existing adjudication process a faster, more cost-effective and efficient adjudication option for people with disputes under construction contracts, where:
 - the kinds of building disputes that can be, and should be, resolved using the adjudication process under the Act are clear
 - adjudication determinations are expert and accurate in the first instance, and able to be quickly enforced so that building work can continue, compensation can be obtained or outstanding payments recovered
 - adjudicators who hear disputes are competent and act with transparency to the parties involved
 - parties who want to use adjudication to resolve their dispute have access to a fair process and have the right to have their say.
- 13 Improving adjudication under the Act is the first step in achieving wider objectives of creating a new approach to building dispute resolution.
- 14 The Building Act review found that, although there are some good dispute resolution options available in the current market, there is a lack of early intervention options and delivery of current services is fragmented.
- 15 The Department of Building and Housing is currently undertaking work on a systems approach to delivering dispute resolution services for people with building disputes.

- 16 Work will progress over 2011 to consolidate the nature of the gap and identify what (specific) new services are required, who is best placed to provide those services and what the fiscal implications are.
- 17 As improvements to adjudication under the Act require legislative amendment it is appropriate a review of the Act be commenced first.

Purpose of the review: supporting wider Building Act reforms

- 18 The suite of policy recommendations that proposed amendments to the Building Act (in August 2010) sought to clarify the legal roles and accountabilities of different parties for building work. These changes are expected to deliver a productive, efficient and accountable building sector [CAB Min (10) 27/10 refers].
- 19 Consumer protection and remedy measures are a necessary pre-requisite to the implementation of these changes, because they ensure accountabilities of different parties can be managed and enforced in practice.
- 20 A discrete package of amendments to the Act is likely to have a big impact on the ability of consumers to hold contractors to account in practice by using the adjudication process.
- 21 Improving the adjudication process under the Act is important in the context of a range of changes being implemented across the Building Act reforms, including:
 - the introduction of “risk-based consenting,” where regulatory oversight of building work is aligned with risk, and the respective accountabilities of building consent authorities (who provide regulatory oversight) and contractors (who do the work) are clarified
 - the need to better support residential consumers to hold contractors to account through mandatory written contracts
 - the need to have effective default dispute resolution mechanisms for people who want to enforce contractual terms and conditions against those who fail to meet their obligations
 - the need to provide a good range of dispute resolution options across the cost spectrum, relative to the kinds of disputes that arise in the construction sector
 - a desire to alleviate some of the issues with joint and several liability by promoting resolution of building disputes under contract (through mandating the use of written contracts), rather than protracted litigation in tort.

Problem definition and key policy issues: improving the adjudication process

- 22 The Act is not broken. Feedback from key stakeholders and submitters has reinforced minor amendments would result in significant improvements in how effective the Act is at achieving its purposes, namely to:
 - facilitate regular and timely payments under contract
 - provide speedy resolution of disputes
 - provide remedies for recovering payments under contract.

- 23 More specifically, the adjudication process is not working as well as it could be. The current scope the Act means, for some, there is little incentive to use what would otherwise be an appropriate resolution model for disputes under contract.
- 24 The jurisdiction of adjudication under the Act is limited and unclear. This has resulted in confusion, especially for residential consumers and contractors, about whether adjudication under the Act is available to them as a means of dispute resolution.
- 25 An adjudication process that is unappealing or not clearly available means there is a perceived gap in dispute resolution options for some people with building disputes: for those people, there is no identifiable service to support existing mediation options or provide a lower-cost alternative to the courts.
- 26 In addition, the purpose of providing an adjudication model under the Act (to support facilitating payments under contract and to enforce remedies for non-payment) is diluted.
- 27 The particular features of adjudication under the Act that require attention are the:
- unequal treatment between residential and commercial construction contracts
 - different enforcement options for different kinds of disputes
 - time and cost barriers to enforcing adjudication determinations
 - unclear rights to appeal or contest adjudication determinations
 - inability to resolve disputes with professional service providers (in particular, those who do design, engineering or quantity surveying work).
- 28 Proposals for targeted amendments to address these issues were generally supported through public and targeted consultation.

Clearly available dispute resolution for building disputes under contract

- 29 The Act currently treats disputes differently depending on who the parties are, and what the dispute is about.
- 30 First, residential contracts are treated differently to commercial contracts. The distinction effectively limits the ability of parties to residential contracts to access a range of benefits under the Act:
- the default payment provisions, which outline how progress payments are requested and made, do not apply to residential construction contracts
 - a dispute under a residential contract can use the adjudication process, but the resulting determination can be difficult to enforce
 - a contractor that is party to a residential contract lacks options for remedying unreasonable non-payment (for example, by giving notice to suspend work).
- 31 Second, the definition of "construction work" (which captures the kinds of construction contracts that are subject to the Act) does not include related goods and services to building work. The exclusion means parties to (for example) design, engineering and quantity surveying contracts are unable to use the adjudication process under the Act to resolve disputes.

32 Third, although parties with disputes about rights and obligations under contract can use the adjudication process, the resulting adjudication determination cannot be enforced. Instead, the entire dispute must be re-heard in arbitration (if the parties have agreed to arbitration) or Court. This means adjudication is not a cost-effective option for some people with rights and obligations disputes, as the parties may still have to go to arbitration or Court.

33 Limiting the benefits of the Act based on different kinds of contracts and different kinds of disputes is largely unwarranted and inefficient:

- it creates confusion about whether a particular contract needs to comply with the payment provisions under the Act
- it creates confusion about whether particular disputes can access adjudication
- it gives commercial contractors an unfair advantage over residential contractors in remedying unreasonable non-payment
- it provides incentives for parties with residential and rights and obligations disputes to use less appropriate and more costly avenues to resolve disputes
- it creates unnecessary extra costs and inconsistent outcomes for consumers who have a dispute where both a building contractor and professional (for example, an architect, engineer or quantity surveyor) are involved. Initiating two separate dispute resolution processes against each party is more costly and can lead to conflicting decisions on a dispute about the same problem.

34 There is one discrete instance where limiting how the Act applies to different kinds of contracts is warranted and reasonable.

Charging orders over residential construction sites

35 One of the remedies available to a party that is owed payment under a contract is to have a charging order placed over the site. A charging order is a Court order that prevents the owner from selling the land until payment is made.

36 A charging order registered against a residential property risks a consumer defaulting under their mortgage agreement, and subsequent sanctions under that agreement (for example, calling in the loan) potentially being enforced against the consumer.

37 The consumer protection considerations outweigh the need for contractors to enforce payment using this remedy. A contractor will have other ways of enforcing payment that are more appropriate (for example, suspending work or taking debt recovery proceedings) if amendments to the Act are made.

Proposals

38 I propose the Act be amended to widen its application to residential contracts.

39 I propose the Act be amended to remove the distinction between residential and commercial contracts, except for the ability to use charging orders as a remedy for non-payment under residential contracts.

40 I propose the Act be amended to amend and clarify the definition of residential occupier.

41 I propose Act be amended to widen the definition of construction work to include design, architectural, engineering and quantity survey work.

42 I propose the Act be amended to allow determinations about rights and obligations disputes to be enforced.

Determinations are expert, accurate and able to be enforced quickly

- 43 If a party has an adjudication determination about payment in their favour, and the other party does not comply, the determination can be enforced in the District Court.
- 44 A party who wants to enforce a determination must first apply for it to be entered as a judgement of the District Court. If the other party still does not comply, further applications for direct enforcement (such as seizure of assets or deductions from wages/salary) may be necessary.
- 45 Having to start Court proceedings to enforce a determination can be costly, especially for parties who may already be financially constrained.
- 46 The Ministry of Justice advise that there are no direct application costs or filing fees associated with enforcing determinations under the Act. However, parties could still face legal costs (if they have engaged a lawyer) and, depending on the nature of the debt and the parties involved, other costs such as interest payments.
- 47 The Court process is also time-consuming. For parties that have already been through an adjudication process, having to wait for the Court to schedule hearings can be frustrating. In addition, it means the resumption of building work or settling payment is further delayed.
- 48 Depending on the scenario, it could take one to three months to enforce a determination.¹
- 49 The time it takes to enforce a determination is critical: for contractors, a lengthy enforcement process to obtain payment for work could mean they are unable to pay their suppliers, labourers or sub-contractors. For consumers, a lengthy enforcement process could put pressure on mortgage finance or delay resumption of building work.
- 50 There are limited options for speeding up the enforcement process. Once an application is made to the District Court to enforce a determination, the process is governed by the District Court Rules 2009.
- 51 The Act provides for an objection period after an application to have a determination entered as a judgement. This allows a defendant time to object to the application on limited grounds. Currently, the objection period is 15 days.
- 52 Given the very limited grounds on which a defendant can object, and the options for contesting or reviewing the determination in its entirety, the objection period could be significantly reduced to five days.

¹ Calculated by the 15-day objection period under the District Court rules and section 74 of the Act (that permits a defendant to object to the determination being entered as a judgement) and the number of subsequent applications required to achieve compliance. Figures for the latter obtained from Ministry of Justice Annual Report 2009/10 (processing of civil debt enforcement application statistics).

53 A five-day objection period would permit adequate time for a defendant to be advised of the application, consider whether an objection is warranted and make an application to object.

54 At the same time the party who wants the determination enforced faces significantly reduced timeframes before they can access direct enforcement options.

Skills and expertise of adjudicators

55 The Act currently contains a provision allowing regulations to prescribe requirements for adjudicators in relation to qualifications, expertise and experience. There are currently no regulations prescribed under this section.

56 In practice, most adjudicators who determine disputes under the Act are subject to industry standards, which are generally high, but set by individual Authorised Nominating Authorities (ANAs). The ANAs that have been appointed to date impose application criteria and ongoing competency testing.

57 If appropriate requirements were prescribed in addition to current industry standards, the standard of determinations could be improved. This may have the effect of improving parties' view of the validity of determinations made under the Act, increasing compliance and payment without needing to resort to enforcement through the Courts.

58 Regulations would recognise and be consistent with existing standards imposed by Authorised Nominating Authorities.

Proposals

59 I propose the Act be amended to reduce the amount of time a defendant has to oppose an application to have an adjudication determination entered as a judgement under section 74 of the Act, to five days.

60 I propose the Construction Contracts Regulations 2003 (the Regulations) be amended to prescribe appropriate requirements for adjudicators in relation to qualifications, expertise and experience (under section 34(1) of the Act).

A fair process where everyone has the opportunity to have their say

61 In practice, people's experiences with adjudication under the Act are mixed, particularly in the residential context. Consumers are often inexperienced at undertaking building work and can find responding to payment claims and resolving disputes daunting and confusing.

62 Having a claim for adjudication made against you can be intimidating. Consumers, and small-business contractors, can be unfamiliar with the adjudication process.

63 Anecdotal information from adjudicators who hear disputes under the Act suggests there have been instances where sophisticated claimants ambush less savvy respondents, who may be less well placed to prepare a comprehensive response to the claim within the strict timeframes outlined in the Act.

64 After adjudication, understanding the limited options for contesting a determination can be difficult for both consumers and contractors. Some people will feel

aggrieved by a determination that goes against them and unclear options for contesting the decision does not help people to make informed decisions about what they should do next.

65 The proposal to remove the distinction between residential and commercial contracts will largely alleviate these issues by widening the scope of how the Act applies to different kinds of contracts or disputes and reducing confusion about what kinds of contracts or disputes are subject to the Act. Additional, targeted responses to the issues outlined above will complete the package.

Proposals

- 66 I propose the Regulations be amended to redraft the existing notices that are required to be served on a residential occupier in plain English to:
- in the case of the notice served with a payment claim, clarify what the consumer's rights and obligations are and the potential consequences of non-payment
 - in the case of the notice served on a respondent to adjudication, clarify what the consumer can expect from the adjudication process in a concise and accessible way.
- 67 I propose the Act be amended to clarify how respondents may seek a time extension for preparing a response to a claim.
- 68 I propose the Act be amended to require adjudicators to convene a pre-adjudication conference to answer any questions parties have about the process, unless both parties agree a pre-adjudication conference is unnecessary.
- 69 I propose the Act be amended to clarify how an adjudication order may be appealed, contested or re-heard.

Security of payment

- 70 Although the Act provides a range of ways to remedy non-payment when it occurs (through adjudication), some key stakeholders believe the Act could go further to ensure contractors get paid.
- 71 BRANZ commissioned market research² in September 2010 to scope the nature and extent of contractors not getting paid. The key findings of this research were:
- 61% of respondents³ had instances of non-payment in the last five years
 - for most (88%), non-payment was an issue in less than 10% of jobs. At the top end of the scale, 10% of respondents reported non-payment being an issue 20%-30% of the time
 - most respondents (66%) indicated the total amount of non-payments by clients was under \$50,000. At the top end of the scale, 4% of respondents had non-payments of over \$500,000.
- 72 To reduce the incidence of non-payment, some stakeholders support widening the purpose of the Act to either mandate use of security of payment measures at the

² BRANZ – Quantitative Research Report into Non-payment Issues (23 September 2010).

³ The sample size was 593 respondents.

outset of the contract or require parties to actively consider using security of payment measures when they are negotiating the contract.

- 73 Security of payment generally means the “principal” (such as a consumer or developer) sets aside the entire amount of the contract price at the beginning of the job in a neutral account or bond. Alternatively, the funder (such as a financier or other mortgagee) will provide proof or assurance that the amount of the contract price is available.
- 74 Funds are then incrementally paid out to the head contractor as payment claims are made and contract terms and conditions are met. Alternatively, if a dispute over payment arose, funds would be available to meet any payment ordered.
- 75 Security of payment measures are already available in the market. Principal’s bonds, trust or escrow accounts and letters of credit (for example) are used in construction contracts to help achieve security of payment.
- 76 Even where security of payment measures are used, payment is not guaranteed in all cases. The BRANZ-commissioned report found that 19% of contractors who had experienced non-payment also had security of payment measures in their contract.
- 77 The Act provides a backstop for cases where non-payment occurs, by providing adjudication of payment disputes and specific remedies to recover non-payment.
- 78 Improving enforcement of adjudication determinations and improving access to remedies for non-payment (particularly by removing the distinction between residential and commercial contracts) will help many contractors secure payment for their services.
- 79 I do not consider legislative intervention to mandate security of payment measures be used in construction contracts is appropriate at this stage, given
- the availability of security of payment measures in the market
 - the ability of contracting parties to decide whether security of payment measures are appropriate
 - other amendments to the Act proposed in this paper.

Information and education requirements

- 80 The proposed legislative amendments outlined in previous sections will not be sufficient by themselves to resolve the issues with adjudication under the Act. There are significant gaps in information and education about the Act that need to be addressed.
- 81 In particular, those gaps include:
- general information about the Act – what it does and who it applies to
 - rights and obligations under the Act for consumers and contractors
 - how adjudication under the Act works and fits in with other dispute resolution options.

- 82 The Department of Building and Housing has a communications plan in place to provide initial and ongoing information and education to the building sector about the wider Building Act reforms.
- 83 In addition, a key component of future work on a new approach to building dispute resolution will include consideration of how a consumer information and advice service could better support consumers and contractors who have disputes.
- 84 The Department of Building and Housing will consider how each of these initiatives could address the gap in information and education about the Act.

Public consultation: November to December 2010

- 85 In November and December 2010 public consultation was undertaken on issues with, and proposals to amend, the Act. A total of 31 submissions were received from a range of organisations, professional associations, contractors and consumers.
- 86 Submissions broadly supported many of the proposals in the discussion document, in particular:
- removing the distinction between residential and commercial contracts
 - removing the distinction between payment and rights and obligations disputes
 - revising the adjudication timeframes
 - improved ways to enforce adjudication determinations
 - confidentiality of adjudication determinations to remain unchanged
 - increased and on-going education about the Act, and contracts in general.
- 87 The discussion document proposed creating an express appeal right, which generated less support from submissions. Many submissions argued the existing ability to take civil proceedings on the same issue at any time, even after adjudication, was more appropriate.
- 88 Many of those that argued for an express appeal right demonstrated a lack of understanding about what the existing options for contesting determinations are.
- 89 Whether the Act should cover related goods and service providers (such as architects, engineers and quantity surveyors) was contentious. Architects and engineers lobbied strongly to retain the existing exclusion.
- 90 Quantity surveyors, dispute resolution specialists, consumers and contractors argued the exemption should be removed to create a more holistic dispute resolution process, where all relevant and appropriate parties are involved.
- 91 Following public consultation, targeted consultation was undertaken with a reference group of key stakeholders. The group comprises representatives from the Construction Industry Council, the Adjudicators' and Mediators' Institute of New Zealand, the Building Disputes Tribunal and the Adjudicators' Association of New Zealand.
- 92 Targeted consultation tested the proposals in this paper and discussed practical implications that could arise.

Consultation

- 93 The following agencies were consulted on this paper: the Treasury, the Ministry of Economic Development, the Ministry of Consumer Affairs and the Ministry of Justice. The Department of the Prime Minister and Cabinet was informed.
- 94 Comments from those agencies were incorporated into the Cabinet paper and Regulatory Impact Statement.

Financial implications

- 95 There are no financial implications arising from the proposals in this paper.

Human rights

- 96 The proposals in this Cabinet paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final view as to whether the proposals will be consistent with the Bill of Rights Act will be possible once the legislation has been drafted.

Legislative implications

- 97 Legislation is required to give effect to the proposals in this paper.
- 98 The Construction Contracts Amendment Bill has a category 5 priority (instructions to the Parliamentary Counsel Office to be provided in 2011) on the legislative programme.

Regulatory impact analysis

- 99 A Regulatory Impact Statement is attached as Appendix One.
- 100 The Department of Building and Housing confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation RIS requirements, have been complied with.
- 101 The draft Regulatory Impact Statement was circulated to government agencies with the Cabinet paper for comment.

Publicity

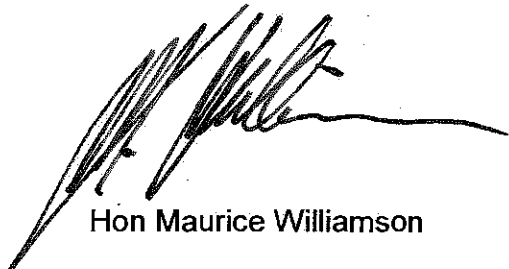
- 102 A Summary of Submissions was published on the Department of Building and Housing's website in February 2011 communicating the results of the consultation.
- 103 I propose this Cabinet paper, Regulatory Impact Statement and minute of decision be published on the Department of Building and Housing's website once decisions are taken.

Recommendations

104 The Minister for Building and Construction recommends that the Committee:

- 1 **note** Cabinet directed the Department of Building and Housing to review the Act with a view to improving its application to both residential and commercial building disputes, and to report back to Cabinet Economic Growth and Infrastructure Committee by 31 March 2011 [CAB Min (10) 27/10]
- 2 **note** Cabinet agreed to the release of a discussion document that canvassed issues with, and proposals to amend, the Act [EGI (10) 25/10 refers]
- 3 **note** amendments to the Act are likely to have a big impact on the ability of consumers to hold contractors to account in practice through adjudication
- 4 **note** adjudication under the Act is not working as well as it could:
 - i) the current scope the Act means there is little incentive to use what would otherwise be an appropriate resolution model for disputes under contract
 - ii) limited application of the Act means there can be confusion about what kinds of disputes can be heard
- 5 **note** the issues with adjudication mean there is a perceived gap in dispute resolution options for some people with building disputes, and the purpose of providing an adjudication model is potentially diluted
- 6 **note** the objective of proposals in this paper is to make the existing adjudication process a fast, cost-effective and efficient adjudication option for people with building disputes under contract
- 7 **agree** to amend the Construction Contracts Act 2002 to:
 - i) widen its application to residential contracts
 - ii) remove the distinction between residential and commercial contracts, except for the ability to use charging orders as a remedy for non-payment under residential contracts
 - iii) amend and clarify the definition of residential occupier
 - iv) widen the definition of construction work to include design, engineering and quantity survey work
 - v) allow determinations about rights and obligations to be enforced
 - vi) reduce the amount of time a defendant has to oppose an application to have an adjudication determination entered as a judgement under section 74 of the Act, to five days
 - vii) amend and clarify how respondents may seek a time extension for preparing a response to a claim
 - viii) require adjudicators to convene a pre-adjudication conference to answer any questions parties have about the process, unless both parties agree a pre-adjudication conference is unnecessary
 - ix) clarify how an adjudication order may be appealed, contested or re-heard
- 8 **agree** the Construction Contracts Regulations 2003 be amended to:

- i) prescribe appropriate requirements for adjudicators in relation to qualifications, expertise and experience (under section 34(1) of the Act)
 - ii) redraft the existing notices that are required to be served on a residential occupier in plain English to:
 - (a) in the case of the notice served with a payment claim, clarify what the consumer's rights and obligations are and the potential consequences of non-payment
 - (b) in the case of the notice served on a respondent to adjudication, clarify what the consumer can expect from the adjudication process
- 9 **note** the Department of Building and Housing will consider how the gap in information and education about the Act can be addressed through:
- i) information and education to the sector about the Building Act reforms
 - ii) future work on a new approach to building dispute resolution
- 10 **invite** the Minister of Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to the proposals in this paper
- 11 **agree** that the Minister for Building and Construction has delegated authority to approve amendments to correct any minor errors, omissions and inconsistencies that may be identified, where no new policy matters arise
- 12 **direct** the Department of Building and Housing to publish this Cabinet paper, Regulatory Impact Statement and minute of decision on its website



Hon Maurice Williamson

Minister for Building and Construction

22, 3, 2011