

1. CONSTRUCTION CONTRACTS ACT 2002

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The purpose of this report is to seek delegation of the Council's powers under the Construction Contracts Act 2002 ("CCA") which came into force earlier this year.

INTRODUCTION

The CCA has two main aims:

- (a) to facilitate regular and timely payments to contractors; and
- (b) to provide a new fast-track dispute resolution for arguments arising from construction contracts.

The CCA will be relevant to the Council because the CCA applies to every construction contract that relates to the carrying out of construction work. "Construction work" is widely defined in section 6 to include, for example, the construction, alteration, repair, maintenance of any road, water and sewer works.

PAYMENT PROVISIONS

If the construction contract fails to specify the number, interval, amount and due dates for progress payments, then the default provisions in the CCA apply.

Under the CCA, there is a procedure which allows a contractor or subcontractor (the payee) to serve a payment claim on the payer (the Council).

Once the payment claim has been served, the Council has two options:

- (a) either pay the claimed amount before the due date (by default this is 20 working days after the service of the payment claim); or
- (b) provide a payment schedule to the payee.

The payment schedule in essence allows the Council to contest the amount set out in the payment claim. If the amount is less than that claimed by the payee, the payment schedule must indicate:

- (i) the manner in which the payer calculated the scheduled amount; and
- (ii) the Council's reason for the difference; and
- (iii) the Council's reasons for withholding payment.

It is important for the Council to provide a payment schedule before the due date and to calculate the scheduled amount with care. If not, the payee can recover through the Court the unpaid portion of the claimed amount and the payee can suspend the work under the contract.

Although the Council's contracts almost always specify full payment details, officers seek a delegation to serve payment schedules in the event that they are required under the CCA.

ADJUDICATION

The second main feature of the CCA is that it establishes a new dispute resolution procedure called adjudication. This procedure is intended to be a quick and cheap way in which the parties can resolve their disputes arising from construction contracts. Unless the parties agree otherwise, the only disputes that can be referred to adjudication are payment disputes.

The decision by an adjudicator is binding on the parties. However, although the decision is binding and enforceable, it may be subsequently nullified or altered by a Court decision.

A basic summary of the procedure is as follows:

- (a) The claimant serves a Notice of Adjudication on the respondent/Council;
- (b) The parties agree on an adjudicator. In the absence of agreement on an adjudicator, they may agree on a nominating body who will appoint the adjudicator;
- (c) The claimant then serves an adjudication claim and the respondent/Council must then serve a response, generally within five working days after receiving the claim;

- (d) Normally the adjudicator must determine the dispute within 20 working days after receiving the Council's response to the claim.

There is a need to ensure that Council staff have appropriate delegations for the adjudication, particularly given the normal five working day statutory timeframe within which the Council would need to respond.

- Recommendation:**
1. That the Council delegate authority to serve payment schedules on contractors, to the engineer to the contract.
 2. That the Council delegate authority to receive Notices of Adjudication, to appoint adjudicators and to respond to an adjudication claim, to the engineer to the contract.