

## Form 2: Information that must be set out in notice of adjudication

### IMPORTANT NOTICE

*This is a notice of adjudication under the Construction Contracts Act 2002 (the Act).*

*The person who sent the notice (the claimant) has a dispute with you and is giving you notice that they are going to refer the dispute for adjudication.*

### What should I do with this notice of adjudication?

You should read the notice thoroughly. This notice provides a brief explanation of the adjudication process and your rights and obligations in the adjudication.

This notice summarises the Act, but is not a substitute for the Act.

**Important:** If there is anything in this notice that you do not understand or if you want further advice about what to do, you should consult a lawyer immediately.

### What sort of process is an adjudication?

An adjudication is intended to produce a quick decision (called a determination) on the dispute. It is different from going to court, mediation, or arbitration and it is intended to be quicker and less formal than most other dispute resolution processes.

However, an adjudicator's determination is binding and can be enforced in court by entry as a judgment.

### Can we choose other methods of resolving our dispute?

Yes, you can still take your dispute to court, arbitration, mediation, or any other dispute resolution process (as well as to adjudication).

If a court makes a decision on the dispute, the court's judgment will stop the adjudication (if it is still underway) or override the adjudicator's determination.

Until a court gives a judgment, court proceedings will not prevent an adjudicator from making a determination or prevent the claimant from enforcing an adjudicator's determination against you.

## What kinds of things can an adjudication resolve?

The adjudication process may be used for any dispute arising under a construction contract.

However, an adjudicator's role is limited to the following (unless you and the other parties to the dispute agree in writing otherwise):

- if the claimant is claiming money, determining whether you or any of the other parties to the adjudication are liable to make a payment under the contract; and
- determining any questions in dispute about a party's rights and obligations under the contract; and
- determining any other matter that is necessary to determine who is liable to pay or the dispute about rights or obligations.

**Note:** If your dispute does not arise under a construction contract, an adjudicator cannot determine it. If you think that the dispute does not arise under a construction contract, you should immediately tell the other party or parties and the adjudicator (if one has been nominated), and consult a lawyer.

## How long will an adjudication take?

The key steps to an adjudication and the indicative time limits are as follows:

<b>Choosing an adjudicator</b>	2 to 5 working days after a notice of adjudication has been served*
<b>Claimant serves adjudication claim on you</b>	within 5 working days of receipt of the adjudicator's notice of acceptance
<b>You serve a written response</b>	within 5 working days of receiving the adjudication claim or the adjudicator's notice of acceptance (whichever is the later), but this time limit may be extended
<b>Adjudicator's determination</b>	within 20 working days after the end of the period during which you can serve a written response, but this time limit may be extended. ** †

\*An adjudication will take less time if you and the claimant can agree earlier on who should be an adjudicator or on who can select an adjudicator. (However, note that any agreement that was made before the dispute arose about the choice of an adjudicator will not be binding on you or any other party to the adjudication.)

\*\*The adjudicator can extend the time limit by up to 10 working days.

†The parties can agree to extend the time limit for any period of time.

For the purposes of the Act, **working day** is any day other than a Saturday, a Sunday, a public holiday, or any day from 24 December to 5 January.

## When will I have to pay any money?

If the adjudicator determines that you must pay an amount to the claimant, you must pay that amount within 2 working days of being given a copy of the determination, or by a later date specified by the adjudicator.

## Summary of rights and obligations

It is important that you—

- read the following statement of your rights and obligations; and
- act promptly (and within the stated times) to exercise your rights or perform your obligations.

## Do I get a say in the choice of adjudicator?

The claimant may contact you to discuss the choice of adjudicator for the dispute. You and the claimant can agree on an adjudicator. If the person you and the claimant have chosen indicates that he or she is unwilling or unable to act, you and the claimant can agree on another adjudicator.

If you and the claimant cannot agree on an adjudicator, you and the claimant can still agree on a nominating body to appoint an adjudicator.

If you and the claimant do not agree on a nominating body, then the claimant can ask an authorised nominating authority to nominate an adjudicator.

**Note:** A party to the construction contract cannot be the adjudicator.

If a proposed adjudicator has a conflict of interest (whether financial or not), that person must advise you and must not act as the adjudicator unless all of the parties to the adjudication agree.

A person who agrees to act as an adjudicator must serve a notice of acceptance on all parties. The notice of acceptance must confirm that the adjudicator has no conflict of interest that he or she has not disclosed (if not, the notice is ineffective).

An agreement that was made before the dispute arose about the choice of an adjudicator, nominating body, or authorised nominating authority is not binding on you or any other party to the adjudication.

## What happens once an adjudicator is appointed?

The claimant must serve an adjudication claim on you no later than 5 working days after receiving the adjudicator's notice of acceptance. The claim must set out the nature or grounds of the dispute and, to the extent that it is still relevant, be accompanied by a copy of the notice of adjudication.

## What should I do once I receive an adjudication claim?

If you want to dispute the adjudication claim, it is essential that you respond promptly, setting out your side of the case.

You can serve a written response on the adjudicator. Your response can be accompanied by any other documents that you consider useful.

You can serve your response by delivering or posting it to the adjudicator at his or her last known place of residence or business in New Zealand or by fax. You may also serve your response by email if the adjudicator has agreed to receive the response electronically.

You have 5 working days in which to do this after receiving the adjudication claim or the adjudicator's notice of acceptance (whichever is later). You may also have any further time that you and the other parties to the adjudication agree to or that the adjudicator allows. (The adjudicator can only give you an extension if you ask within the 5-working-day period.)

If you do not serve a written response within that time, the adjudicator may draw inferences from that failure and may decide the dispute on the basis of the information that is available to him or her without the benefit of your response.

You must also 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.

You can serve a copy of your response by delivering or posting it to the claimant or other party to the adjudication at their last known place of residence or business in New Zealand or by fax. You may also serve your response by email if the recipient (ie, the claimant or other party) has agreed to receive the response electronically.

## **Can I be represented?**

Yes, all parties can be represented by legal (or other) representatives. However, the adjudicator may limit the number of representatives at any meeting so that the meeting can be conducted efficiently.

## **Can more than 1 dispute be dealt with at the same time?**

If 2 or more related adjudications are pending and all of the parties consent, it is possible for the adjudicator to determine all of the adjudication proceedings at the same time.

## **What are the rules about adjudication proceedings?**

Adjudicators are required to act independently, impartially, and in a timely manner. They must avoid incurring unnecessary expense and must comply with the principles of natural justice.

If an adjudicator becomes aware that he or she has a conflict of interest, the adjudicator must advise the parties to the adjudication and resign (unless all of the parties agree to the adjudicator acting anyway).

As long as an adjudicator complies with these requirements, he or she may conduct the adjudication in any manner he or she thinks fit.

For example, an adjudicator may—

- request additional (written) submissions from the parties to the adjudication:
  - ask the parties to provide copies of any documents that the adjudicator might reasonably require:
  - set deadlines for further submissions and comments by the parties:
  - appoint expert advisers to report on specific issues (as long as the parties are notified before the appointments are made):
  - call a meeting of the parties:
  - carry out an inspection of any construction work, or any other thing to which the dispute relates:
  - issue reasonable directions relating to the conduct of the adjudication:
  - request that the parties do any other thing during the course of an adjudication that the adjudicator considers reasonably necessary to determine the adjudication.
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## Are adjudicators and expert advisers otherwise responsible to me?

Neither the adjudicator nor any expert adviser that the adjudicator appoints is under any liability to you for anything that they do or fail to do in their capacity as adjudicator or expert adviser (unless they act in bad faith).

## Are adjudications confidential?

All information that is disclosed during an adjudication, for the purposes of the adjudication, is confidential (to the extent that it is not already public). Any statement, admission, or document made or created for the purposes of an adjudication is also confidential.

Neither the adjudicator nor any party to the dispute may disclose that information except—

- with the consent of the relevant party; or
- to the extent that disclosure is necessary to the adjudication or for the enforcement of the adjudicator's determination; or
- in statistical or summary form in a way in which no particular person can be reasonably identified; or
- where the information is to be used for statistical or research purposes (and will not be published in a way in which any particular person can reasonably be identified).

## How will the adjudicator make a decision?

The adjudicator's determination must—

- be in writing; and
- be in the form prescribed in the Construction Contracts Regulations 2003; and
- contain the reasons for the decision (unless you and the other parties to the adjudication agree that reasons do not have to be given).

The adjudicator must give you a copy of the determination as soon as practicable after making it.

If the adjudicator decides that any party is liable to pay money, the adjudicator must also decide the amount payable, when it is payable, and whether any conditions must be met before it is payable.

## Who has to pay the costs of adjudication proceedings?

In most cases, the parties to the adjudication must meet their own costs and expenses.

However, an adjudicator may decide that costs and expenses must be met by one of the parties to the adjudication if that party has caused those costs and expenses to be incurred unnecessarily.

**Note:** An agreement made by the parties before a dispute arose about how the costs and expenses in adjudication proceedings will be apportioned is not binding.

## Who has to pay the adjudicator's fees and expenses?

The adjudicator's fees and expenses must usually be met equally by the parties to the adjudication.

However, an adjudicator may decide that—

- one party must bear a greater share of the adjudicator's fees and expenses if that party behaved in a contemptuous or improper manner during the adjudication; or
- the claimant must bear a greater share of the adjudicator's fees and expenses because the claim was (substantially) without merit; or
- the respondent must bear a greater share of the adjudicator's fees and expenses because the respondent's written response was (substantially) without merit.

The adjudicator's fees and expenses are payable only if the adjudicator determines the dispute within the required time.

If an adjudication claim is withdrawn or terminated, or the dispute is resolved without adjudication, an adjudicator is still entitled to be paid fees and expenses incurred to date.

**Note:** An adjudicator may require you to pay his or her fees before communicating his or her decision.

