

## Construction Contracts Act 2002

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Last updated: 30 March 2017

The Construction Contracts Act 2002 (the Act) provides a process for dealing with payments and disputes under a construction contract.

The Construction Contracts Act 2002:

- protects retention money withheld under commercial construction contracts
- helps to ensure a fair, balanced and appropriate payment regime
- provides a fast and cost-effective adjudication process for people with disputes
- provides enforcement mechanisms to recover any unmade payments.

The [Construction Contracts Act 2002](http://www.legislation.govt.nz/act/public/2002/0046/latest/DLM163059.html) (<http://www.legislation.govt.nz/act/public/2002/0046/latest/DLM163059.html>) is available on the New Zealand Legislation website. The Construction Contracts Amendment Act 2015 (the CCAA) contains new requirements for protecting retention money.

## Changes relating to retention money (2015)

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### Construction Contracts Amendment Act 2015

The Construction Contracts Amendment Act 2015 (CCAA) and the Regulatory Systems (commercial Matters) Amendment Act 2017 put in place new requirements for protecting retention money. From 31 March 2017, retention money withheld under commercial construction contracts must be held on trust in the form of cash or other liquid assets readily converted into cash, unless a financial instrument is purchased. These requirements apply only to contracts entered into, or renewed, on or after 31 March 2017.

Payers (eg, developers and head contractors) who choose to withhold retention money have two options:

- holding retention money on trust in the form of cash or other liquid assets readily converted into cash (as currently required by the CCAA) – the default option
- obtaining a financial instrument ('complying instrument' in the CCAA), such as insurance or a payment bond, to provide third-party protection of retention money.

There are strict requirements on the financial instruments to ensure repayment of retention money:

- financial instrument providers are limited to registered banks and licensed insurers
- financial instruments are required to be issued in favour of payees (eg subcontractors) and allow them to directly enforce the 'promise to pay' against the financial instrument provider. The only condition on that promise to pay is that payment of retention money has not been made on the date it is payable under the construction contract
- records of financial instruments are required to be kept and made available to subcontractors at all reasonable times and without cost.

## No regulations are currently proposed

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During 2016, the Ministry of Business, Innovation and Employment (MBIE) consulted the construction industry on what, if any, regulations should be made under the retention money provisions of the CCAA. The CCAA contains the power to make regulations setting a minimum amount of retention money that the provisions will apply to, and setting methods of accounting for retention money (additional to those set out in the CCAA).

No regulations are currently proposed. The retention money provisions will apply regardless of the amount of money involved to ensure payment for small subcontractors is protected. The methods of accounting for retention money and records of financial instruments are those set out in

the CCAA. MBIE expects industry participants to develop reporting methods that best suit the accounting systems they have in place.

## Further information

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Read about [retention money withheld under commercial construction contracts \(https://www.building.govt.nz/assets/Uploads/projects-and-consents/retention-money-commercial-construction.pdf\)](https://www.building.govt.nz/assets/Uploads/projects-and-consents/retention-money-commercial-construction.pdf) [PDF 330 KB].

For more information on construction contracts, visit the [MBIE Corporate website \(https://www.mbie.govt.nz/building-and-energy/building/supporting-a-skilled-and-productive-workforce/understanding-the-construction-contracts-act/\)](https://www.mbie.govt.nz/building-and-energy/building/supporting-a-skilled-and-productive-workforce/understanding-the-construction-contracts-act/)

## Changes relating to payment and dispute resolution

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The CCAA amended the provisions in the Act relating to payment and dispute resolution. Key changes relating to payment and dispute resolution include:

- residential and commercial construction are treated the same under the Act, with the exception of charging orders. This gives parties to residential contracts full access to the Act's dispute resolution and payment regimes
- design, engineering and quantity surveying work is included under the scope of the Act. This gives parties to construction contracts for this type of work full access to the Act's dispute resolution and payment regimes
- the adjudication process is streamlined
- the enforcement process is strengthened.

Read the fact sheet about [changes relating to adjudication and enforcement \(https://www.building.govt.nz/assets/Uploads/projects-and-consents/cca2002-changes-adjudication-enforcement.pdf\)](https://www.building.govt.nz/assets/Uploads/projects-and-consents/cca2002-changes-adjudication-enforcement.pdf) [PDF 414 KB].

'[Understanding the Construction Contracts Act](https://www.mbie.govt.nz/building-and-energy/building/supporting-a-skilled-and-productive-workforce/understanding-the-construction-contracts-act/)' (<https://www.mbie.govt.nz/building-and-energy/building/supporting-a-skilled-and-productive-workforce/understanding-the-construction-contracts-act/>) on the MBIE Corporate website has further information.

## Contracts covered by the Act

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If you have entered into a contract for construction work, your contract is covered by the Act.

Construction work includes work on:

- buildings and other structures that form part of land, including temporary structures
- fittings in the building, such as heating, lighting and fire protection
- infrastructure that forms part of land, such as roads, utilities and land drainage.

Construction work includes constructing or installing, altering, maintaining and removing the building, fittings or infrastructure. It includes work integral to the construction work, such as excavation, scaffolding and prefabricating components. It also includes design, engineering and quantity surveying work.

This description of construction work is illustrative only. For the full meaning of 'construction work', see section 6 of the Construction Contracts Act 2002.

## How the Act applies to your contract

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The Act provides you with default payment provisions and bans the use of 'pay when paid'. The Act also provides fast-track adjudication of disputes about your contract, along with ways to enforce payment.

### Payments

You can make payments in two ways under the Act:

- over several instalments (known as 'progress payments')
- as a single payment.

You should make the payment obligations clear in your contract. If you don't, default provisions of the Act will apply, which provide for monthly progress payments.

You can make a payment claim for any amount you believe is due under the contract. You must include a notice (Form 1) with all payment claims you make. The notice outlines:

- the processes for responding to the payment claim
- the consequences of not responding to or paying a claimed or scheduled amount.

If you entered into a construction contract on or after 1 December 2015, you will need to include a notice (Form 1) with any payment claims you make.

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### Form 1 - Information that must accompany all payment claims

[PDF 334 KB]

<https://www.building.govt.nz/assets/Uploads/projects-and-consents/forms/Form-1-Information-that-must-accompany-all-payment-claims.pdf>

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## Adjudication of disputes

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The Act provides you with a fast-track adjudication process for disputes under your construction contract. This includes disputes about:

- payments
- rights and obligations.

You should get advice from your lawyer before you begin an adjudication process. They will be able to give you more information about what the process will involve.

If you decide to refer your dispute for adjudication, you must serve a written notice on the other party. Your notice must include information (Form 2) which details:

- the respondent's rights and obligations
- an explanation of the adjudication process.

Once the adjudicator has been chosen, they must confirm their role as adjudicator by giving a notice of acceptance.

The adjudicator will be able to make a timely decision about your dispute because all parties must operate within the tight timeframes set out in the Act. The adjudicator's decision is binding and is enforceable in court. You must comply with the adjudicator's decision, even if you are intending to contest that decision in court.

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### Form 2 - Information that must be set out in notice

## of adjudication

[PDF 352 KB]

<https://www.building.govt.nz/assets/Uploads/projects-and-consents/forms/Form-2-Information-that-must-be-set-out-in-notice-of-adjudication.pdf>

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## Review of retention money regime (2019)

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KPMG delivered a report to help MBIE understand the implementation and effectiveness of the retentions money provisions regime in the Construction Contracts Act (2002). The purpose was to understand:

- awareness of the regime in the sector
- overall compliance with the regime
- whether there has been any behaviour change as a result of the regime
- any consequences on solvent and insolvent businesses.

The report was finalised in August 2019. In summary, a large portion of the sector is complying with the regime, and there is good knowledge of its requirements. There is some evidence that the regime has protected subcontractors in the event of insolvency and money has been returned to them. However, there are still some issues around compliance.

Read KPMG's Retention Money Provisions report [PDF 1.4MB] (<https://www.building.govt.nz/assets/Uploads/projects-and-consents/retention-money-provisions.pdf>)

After engaging with the sector on how to improve the retention money regime, the Minister for Building and Construction announced changes to the regime in May 2020.

Read the media release on [beehive.govt.nz](https://www.beehive.govt.nz/release/govt-delivers-security-construction-subcontractors) (<https://www.beehive.govt.nz/release/govt-delivers-security-construction-subcontractors>)

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**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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