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## CONSTRUCTION

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## CONSTRUCTION CONTRACTS ACT REVIEW

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The Department of Building and Housing has released a discussion document on a review of the Construction Contracts Act 2002 (CCA), which can be found by following this hyperlink:

[Construction Contracts Act 2002 Discussion Document](#).

This document has been initiated because a recent review of the Building Act 2004 identified some weaknesses in the protection of consumers undertaking building work. The Department of Building and Housing was directed to review the CCA with the aim of improving its application to residential and commercial building disputes.

The discussion document contains proposals for amending the CCA, and asks for views on these proposals and on how the CCA is working generally.

### Proposals

The proposals are to:

- 1) Widen the scope of the CCA so that it also applies to **related goods and services**.

At present, the definition of construction work in the CCA excludes related goods and services. This means (for example) contracts for the supply of goods, materials and equipment, design or architectural work,

engineering work and quantity surveying are excluded from the CCA.

The discussion document proposes removing the exclusion so that default payment provisions and adjudication provisions in the CCA also apply to these types of contracts. This will affect you if you are a materials or equipment supplier, or carry out architectural, engineering or quantity surveying work, or if you enter into contracts for the supply of any of those goods or services.

- 2) Widen the scope of the CCA so that it also applies to **residential contracts**.

Under the CCA, the default progress payment provisions do not apply to residential contracts, and options to obtain an adjudication order or charging orders in respect of residential contracts are limited. It is proposed that this limitation is removed, so that the provisions of the CCA apply in full to residential construction work.

- 3) Require a **notice** to accompany all payment claims.

It is proposed that a notice would be required to accompany all payment claims, whether residential or

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commercial, that explains how to respond to the claim and what the consequences are of not paying or not paying in full. At present, such a notice is only required for residential occupiers.

The intention is to remove uncertainty about whether the consumer is a residential consumer (i.e., by requiring the notice in all situations) and to ensure parties are better informed about their obligations under the contract. This would impose a further administrative burden on parties making payment claims.

- 4) Remove the **confidentiality** of adjudication orders under the CCA.

The CCA currently provides that all adjudication orders are confidential. The discussion document proposes that this would change, and all information relating to adjudication orders would become publicly available, including commercially sensitive information.

- 5) Allow parties to **enforce** adjudication orders as if they were orders of the District Court.

In order to enforce an adjudication order, parties have to bring enforcement proceedings through the Courts, which is costly and time-consuming. It is proposed that the CCA enables direct enforcement of adjudication orders (both in relation to payment disputes and rights and obligations disputes) as if they were orders of the District Court. It will be similar to the way orders of the Tenancy Tribunal are able to be enforced.

- 6) Allow parties to **appeal** adjudication orders.

At present, the options to appeal adjudication orders are very limited. The discussion document proposes that adjudication orders would be able to be appealed if the orders are wrong (in law or in fact) or if the process was unfair. Appeal would be to the District Court in the first instance. This is similar to the way appeals from the Tenancy Tribunal operate.

**Making a submission**

Submissions on the discussion document close on **16 December 2010**.

If you require further information on the discussion document or assistance with a submission, please contact your usual Bell Gully adviser or:

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