Building design work now covered by Constructions Contract Act 2002 - Important implications for building and spatial designers

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**Introduction**

With effect from 1 September 2016, design services will be included in the definition of “Construction Work” under the Construction Contracts Act 2002 (“CCA”). This article summarises some of the important implications for building and spatial designers.

**Law Changes from 1 September 2016**

The definition of "construction work" has been expanded to include design, engineering and quantity surveying work. This means building and spatial designers, and their clients, will have access to the default payment provisions in the CCA and, if disputes arise, the adjudication process.

The expanded definition will come into force on 1 September 2016. The CCA changes will not affect contracts entered into or renewed before that date.

The differences between how the CCA applies to residential construction contracts and commercial construction contracts have been removed. Parties to either type of contract now have equal access to the default payment provisions and adjudication processes under the CCA.

**Design Services covered by the CCA**

For constructs formed from 1 September 2016 onwards, the CCA will apply to a wide variety of building-related design services carried out in New Zealand, including:

* construction, installation, alteration, repair, restoration, maintenance or extension, of any building, erection or structure (whether permanent or not and whether constructed on, above, or below ground level);
* any works forming, or to form, part of land including roading, wharfs, pipelines, sewers, any electricity, water, gas or telephone reticulation, any telecommunication apparatus or industrial plant, drainage or coastal protection;
* the installation in any building or structure of fittings including heating, lighting, air conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, security, and communications systems (including alteration, repair or maintenance of those systems); and
* Any preparatory works including site clearance, earthmoving, excavation, tunnelling, boring, scaffolding, landscaping and access, or prefabricating customised components of any building or structure, whether carried out on the construction site or elsewhere.

**Implications for building/spatial designers**

Designers who are involved in a range of building, building services or spatial design will now be covered by the CCA – and their clients will be too.

In these circumstances, designers and their clients will have recourse to the payment provisions in the CCA and, if disputes arise, the adjudication process

In circumstances where payment provisions are not clearly defined by contract, the, default provisions of the CCA will apply, which provide for monthly progress payments.

A designer can make a payment claim under the CCA for any amount they believe is due under the contract. The Designer must include a prescribed notice with all payment claims made, notifying the client of the processes for responding to the payment claim and consequences.

The CCA also provides fast-track adjudication of disputes about building and spatial design contracts, together with ways to enforce payment.

**Benefits for Designers**

Overall, the changes provide additional methods for building and spatial designers to enforce contracts and recover payments due. The accelerated and less-formal CCA adjudication process may not, however, be suited to disputes involving allegations of negligent design or similar circumstances where specialist/expert evidence is required. Designers with professional indemnity insurance will also need to be conscious of notification obligations and other duties owed to insurers, which will need to be carefully managed in a very condensed timeframe under CCA adjudication.

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