

Form 2A

Notice of acceptance

Section 35A, Construction Contracts Act 2002

Date of service: (insert date)

Acceptance of appointment as adjudicator

I (insert adjudicator's name) accept appointment as adjudicator under section 35 of the Construction Contracts Act 2002 to determine a dispute between (insert claimant's name) and (insert respondent's name).

I confirm that I meet the eligibility criteria for adjudicators under section 34 of the Construction Contracts Act 2002.

Contact details of adjudicator

Organisation name (if applicable): (insert organisation name)

Address for service: (insert address)

Telephone: (insert telephone number)

Email: (insert email address)

I was requested to act as adjudicator by—

- *agreement between the relevant parties under section 33(1)(a) or (b) of the Construction Contracts Act 2002.
- *(insert name of nominating body), a nominating body chosen by agreement between the relevant parties under section 33(1)(c) of the Construction Contracts Act 2002.
- *(insert name of authorised nominating authority), an authorised nominating authority chosen by the claimant under section 33(1)(d) of the Construction Contracts Act 2002, because the parties could not or did not agree on an adjudicator or a nominating body.

*Select one.

Next steps and time frames

The time frames for the adjudication process have commenced. These include strict time frames for each party to give the adjudicator and the other party certain information.

For the claimant

You, (insert claimant's name), must **within 5 working days** of receiving this notice refer the dispute to the adjudicator by serving a written adjudication claim on the adjudicator. The adjudication claim—

- must set out the nature or the grounds of the dispute; and
- must be accompanied by a copy of the notice of adjudication (to the extent that it is still relevant); and
- may be accompanied by any other documents.

You must also serve a copy of the adjudication claim and any accompanying documents on every other party to the adjudication (either before or immediately after they are served on the adjudicator). The adjudication claim can be served on the adjudicator and the other parties in the following ways:

- by delivering it to the recipient in person; or
- by leaving it at the recipient's usual or last known place of residence or business in New Zealand; or
- by posting it in a letter addressed to the recipient at the recipient's place of residence or business in New Zealand; or
- by fax;
- or with the consent of the recipient, by email or other means of electronic communication.

Important: The 5-working-day period for providing the adjudication claim has already commenced. If you do not know how to write an adjudication claim, you should consult a lawyer immediately.

If the respondent serves a written response to the adjudication claim on the adjudicator, you have 5 working days in which to serve the adjudicator with a written reply to that response.

A copy of the response and any accompanying documents must also be served on you and every other party to the adjudication either before or immediately after they are served on the adjudicator. A copy of the reply to a response and any accompanying documents must also be served on the respondent and every other party to the adjudication either before or immediately after they are served on the adjudicator.

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Note: If your reply to a respondent's response raises any new material or issues, an adjudicator may refuse to consider the new material or issue.

For the respondent

You, **[insert respondent's name]**, can serve a written response to the adjudication claim on the adjudicator within 5 working days after receiving the claim or the adjudicator's notice of acceptance (whichever is later).

The response may be accompanied by any other documents that you consider useful. You must also serve a copy of the response and any accompanying documents on the claimant and every other party to the adjudication either before or immediately after these documents are served on the adjudicator.

The written response can be served on the adjudicator and the other parties in the following ways:

- by delivering it to the recipient in person; or
- by leaving it at the recipient's usual or last known place of residence or business in New Zealand; or
- by posting it in a letter addressed to the recipient at the recipient's place of residence or business in New Zealand; or
- by fax; or
- with the consent of the recipient, by email or other means of electronic communication.

Important: If you do not know how to write a response to an adjudication claim, you should consult a lawyer immediately.

Note: If you want to serve a written response but cannot meet the time frame of 5 working days, you can ask the adjudicator or the other parties to the adjudication for further time.

If a request for further time is made to the adjudicator before the end of the 5-working day period, the adjudicator must allow further time to serve a written response if the adjudicator considers it necessary, having regard to the size or complexity of the claim or because, in the adjudicator's opinion, the claim was served with undue haste and you have had insufficient time to prepare a response.

The adjudicator may also allow further time to serve a written response if the adjudicator considers further time is reasonably required for any reason.

The claimant may serve the adjudicator with a written reply to your response. If this happens, the adjudicator may allow you up to 2 working days to serve a rejoinder to the reply.

Adjudicator's determination

The adjudicator must make a decision within 20 working days after the end of the period during which the respondent can serve a written response.

The adjudicator can extend this time frame by up to 10 working days if the adjudicator thinks more time is reasonably required. The parties can also agree to extend the time limit for any period.

The adjudicator's decision is called a **determination**. The determination must be in writing and dated. The determination must contain the reasons for the decision, unless the parties agree in writing that reasons do not need to be given. The adjudicator must give a copy of the determination to all parties as soon as practicable after making it.

Important procedural matters

Prompt decisions are needed to ensure that certain procedural matters are dealt with within the time frame in which the adjudicator must make a determination.

Representation

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

Multiple disputes

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

Confidentiality

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 that is created or made for the purposes of an adjudication is also confidential.

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

- with the consent of the relevant party; or
- to the extent that the disclosure is necessary to the adjudication or for the enforcement of the adjudicator's determination; or
- in statistical or summary form where 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).

Costs and fees

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

However, the adjudicator can determine 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 unnecessarily incurred either by bad faith or by allegations or objections that are without substantial merit.

Note: Any agreement made before the dispute arose about how the costs and expenses in adjudication proceedings are to be apportioned is not binding.

The adjudicator is only entitled to be paid fees and expenses from the date of acceptance, subject to section 57(5) of the Act.

The adjudicator is entitled to be paid fees and expenses in connection with the adjudication only if he or she determines the dispute within the required time.

The adjudicator's fees and expenses must usually be met equally by the parties to the adjudication. However, the adjudicator may determine 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 response was (substantially) without merit

The adjudicator's fees and expenses will be calculated as follows:

[Describe the method for calculating fees and expenses.]

The adjudicator may require the parties to pay the adjudicator's fees and expenses before communicating his or her determination.

Can other methods be used to resolve the dispute?

Any party can submit the dispute to another dispute resolution procedure (such as to a court or tribunal or to mediation) at any time, as well as to adjudication. Another dispute resolution procedure can take place concurrently with the adjudication. However, if another dispute resolution procedure resolves the dispute before the adjudicator makes his or her determination, the adjudicator will have to terminate the adjudication proceedings.

Adjudication proceedings may also be withdrawn. The claimant can withdraw an adjudication claim by giving written notice to the adjudicator, unless—

- the respondent objects; and
- the adjudicator accepts that the respondent has a legitimate interest in obtaining a determination.

The parties to the adjudication can also agree to an adjudication claim being withdrawn.