

The Dentons logo, consisting of the word "DENTONS" in white, uppercase, sans-serif font, enclosed within a white chevron shape pointing to the right. The background of the entire page is a dark, textured image of layered rock or stone, with a large, solid purple shape in the upper left corner that partially obscures the rock texture.

DENTONS

Construction and major projects in New Zealand

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December 2023

Construction and major projects in New Zealand



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— Construction,
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Construction Contracts Act

Dispute Resolution

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Major Building Projects

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Key points about construction law in New Zealand



Building and construction projects are almost always carried out in New Zealand under a negotiated contractual arrangement, the form of which will be determined by the type, size and complexity of the particular project. Building and construction contracts are governed by the general law of contract subject to specific legislative controls, primarily under the *Resource Management Act 1991*, *Health and Safety at Work Act 2015* (both dealt with in other sections of this guide), *Building Act 2004*, and the *Construction Contracts Act 2002*.

The detail

Procurement

Tender processes are commonly used by principals (particularly public agencies) and head contractors to create a competitive bid environment. Traditional contracting models still prevail in the market although in recent years, some large-scale infrastructure projects have been procured under a public private partnership (PPP) structure or on the basis of other alliancing models.

Standard Form Contracts

The New Zealand Standard (NZS) suite of contracts are the most commonly used construction contracts in the market, primarily: NZS 3910 (traditional 'build only'); NZS 3916 (design and build); and NZS 3917 (fixed-term or maintenance). These are often tailored to specific projects through the inclusion of special conditions. NZS 3910 has been significantly updated with the new version to be released in December 2023. There are also other standard forms including:

- New Zealand: the NZIA's SCC1 2018 contract and a Master Builders contract, and
- International: FIDIC and NEC 3 and 4.

Building Act 2004

All building work in New Zealand must comply with the Building Code (contained in Schedule 2 to the Building Act). The Code prescribes minimum performance standards which a building must meet and methods by which a builder can establish compliance. The Code is being constantly updated. The Building Act also:

- requires work affecting the structural integrity or weathertightness of a building to be carried out or super-vised by a Licensed Building Practitioner, and;
- implies warranties relating to the performance of contract works into all residential building contracts.

Payment Security

The Construction Contracts Act 2002 (CCA) is designed to assist contractors in securing their right to payment via:

- statutory right to progress payments;
- right to claim as a statutory debt due amounts owing;
- right to obtain a charging order (or lien) over a construction site;
- rendering invalid 'pay-if-paid' and 'pay-when-paid' clauses;
- right to suspend work for unjustified non-payment;
- all retentions to be held on trust or via a financial instrument.
- The Construction Contracts (Retention Money) Amendment Act 2023 has markedly improved the retentions regime under the CCA. These changes come into force in October 2023.

Tortious Liability

New Zealand recognises an extra-contractual duty of care on the part of contractors, subcontractors, suppliers and consultants (amongst others) to owners and subsequent purchasers with respect to building defects, including weathertightness requirements, and the parties responsible can be sued in tort for breaching this duty of care.

Duration of Liability

Legal proceedings must be commenced within the relevant statutory limitation period which, in short, requires a claim to be brought within 6 years from the date of the act or omission in question. However, if the claimant has 'late knowledge' of the damage, the claim can be brought outside the 6 year limitation period provided it is lodged within three years of discovery of the damage. In relation to 'building work' covered by the Building Act, this is subject to an overarching 10 year long-stop period.

Seismic activity

The Building (Earthquake-prone Buildings) Amendment Act 2016 (EPB Act) was passed in response to the numerous seismic events that have occurred in New Zealand since 2010. In short, it requires building owners to carry out strengthening work to commercial and apartment buildings identified by territorial authorities (and confirmed via an engineering assessment) as prone to collapse in a moderate earthquake.

The Ministry of Business Innovation and Employment is in the process of reviewing the technical standard (NZS 1170.5) against which a building's performance is measured. This review comes after the release of the updated National Seismic Hazard Model in 2022, which highlighted the need to boost national seismic resilience. However, the current EPB Act requires that buildings are assessed against the version of NZS 1170.5 which applied at 1 July 2017. This means any update to NZS1170.5 will not effect the assessment of earthquake prone buildings under the EPB Act, unless the EPB Act is amended to reflect the updated understanding of seismic risk following the release of the National Seismic Hazard Model (2022).

Dispute resolution

Statutory adjudication of disputes under the CCA is by far the most popular mode of dispute resolution, however construction contracts will usually provide for arbitration as the final step. Dispute Review Boards remain relatively uncommon in New Zealand, save on some larger public projects. New Zealand has no specialist construction law courts. Mediation also remains a popular mechanism for resolving disputes.

How we can help you

- Negotiating, advising on standard form documentation and drafting bespoke contracts of all procurement models to minimise client risk.
- Advising on residential and commercial building projects and a wide range of infrastructure projects such as road and rail projects, schools, prisons, stadiums, civil and earthworks, and water and energy projects.
- Advising on large-scale joint venture projects and complex procurement processes such as PPP's, project alliances and early contractor involvement (ECI) arrangements.
- Providing strategic project delivery advice and contract administration support, including to secure the right to payment through contractual means and under the CCA.
- Preparing, defending and resolving commercial and residential claims brought by way of CCA adjudication, arbitration and in the Courts, and through ADR such as expert determination, conciliation and mediation.

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