

## Compulsory Adjudication – Will Australia Follow The UK's Lead?

The construction industry in the UK has long been regarded as overpriced, inefficient and characterised by an inequality of bargaining power such that the rights of the “*little people*” are consistently overlooked.

These concerns led the English parliament to introduce compulsory adjudication as part of a package of industry reforms.

### What is compulsory adjudication?

Compulsory adjudication is intended to help reduce the cost and inefficiencies of construction projects by streamlining the dispute resolution process. Also intended to protect the smaller players in the industry, it has been introduced as part of a package of reforms contained in the *Housing Grants, Construction and Regeneration Act 1996 (UK)* (“the Act”), which came into effect on 1 May 1998.

The Act applies to a wide range of contracts including contracts to carry out or arrange construction works, advise on building or engineering, carry out interior or exterior decoration, landscape gardens or to do architectural or surveying work. These types of contracts must provide that:

- a party to the contract has the right to refer a dispute arising under the contract for adjudication by issuing a notice of its intention to do so to the other party;
- an adjudicator must be appointed and the dispute (including any response to the notice of dispute) must be referred to the adjudicator within 7 days of the notice being received;
- the adjudicator must reach a decision within 28 days of the notice being received by the other party (or 42 days if all parties consent to this extended time frame);
- the adjudicator’s decision is binding until and unless the matter is finally determined by the courts;
- the adjudicator must act impartially;
- if the adjudicator acts in good faith he or she is immune from suit.

### Criticisms

The compulsory adjudication procedure has come under heavy attack for being ill defined. No guidance is provided as to who should act as an adjudicator or whether the adjudicator must make a decision according to legal principles or common sense.

There is an obvious problem in applying the same inflexible time frame to any dispute which may arise as the time frame will not be adequate for all cases, especially complex multi-faceted disputes which may arise in large commercial projects.

The temporary nature of the adjudicator’s decision is another problem.

The Act does not provide a mechanism to enforce the decision or a time limit on challenging that decision. It has also been criticised for taking away the power of the parties to determine their own dispute resolution procedure.

### Conclusion

Given the problems with the UK experience, it seems unlikely that compulsory adjudication, at least in the form contained in the *Housing Grants, Construction and Regeneration Act*, will be introduced in Australia.

- Maddock Lonie & Chisholm’s Constructions Update.