



Applying the NEC Contracts in New Zealand

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Overview of the Session



- Introduction
- Y(NZ)1 and Y(NZ)2
- Potential Z clauses
- Potential Schedules
- Warranties and Guarantees
- Amending NEC to comply with the Health & Safety at Work Act 2015
- Amending NEC to comply with the Construction Contracts Amendment Act 2015

- Can I use NEC unamended in New Zealand?
 - **NO:**
 - If the contract is for construction work, need to select Y(NZ)1 to comply with the Construction Contracts Act 2002
 - Will be necessary to make amendments to ensure compliance with the Health & Safety at Work Act 2015
 - Terminology needs to be introduced (GST, RMA, HSEA)

- Only select where there is “construction work”
- Incorporated into the contract by reference to Y(NZ)1 in the Contract Data Part 1
- Supplements the payment provisions to ensure compliance with the CCA and aligns the dispute resolution provisions

- Only select where the project is carried out in New Zealand or the *law of the contract* is New Zealand
- Incorporated into the contract by reference to Y(NZ)2 in the Contract Data Part 1
- Include the names of the third parties who can benefit from the Y(NZ)2 clause

Potential Z clauses



- Definitions
- Assignment
- Subcontracting
- Novation
- Confidentiality
- Public Relations

Potential Z clauses cont.



- Insurance
- Environmental Compliance
- Dispute Resolution – Option W1 or something else?

- Form of Contract Agreement
- Form of Bond
- Bond in Lieu of Retentions
- Deed of Novation

Warranties and Guarantees



- Parent Company Guarantee
- Continuity Guarantee
- Contractor/Subcontractor Warranty
- Weathertightness Warranty

- Comes into force on **4 April 2016**
- PCBU – primary duty:
 - to ensure so far as is reasonably practicable the health and safety of workers who work for the PCBU and workers whose activities are influenced or directed by the PCBU while carrying out the work

- Duty to consult with other PCBUs
- So far as is reasonably practicable need to:
 - **Consult**
 - **Co-operate**
 - **Co-ordinate**

- Need Z clauses to cover:
 - PCBU's primary duty of care
 - Overlapping duties of PCBUs
 - Health & Safety in general to ensure:
 - risks to health and safety are eliminated so far as is reasonably practicable; and
 - where not reasonably practicable to eliminate then the risks are minimised so far as is reasonably practicable

- Construction Contracts Amendment Act 2015
 - Sections 6 and 11 in force **1 September 2016**
 - Sections 4(3) and 18 in force **31 March 2017**
 - Rest of the Act **1 December 2015**

- Contracts involving design or engineering work, or quantity surveying work
- Unclear exactly who will be included and what “engineering work” is

- Retention money defined as:

“...an amount withheld by a party to a construction contract (party A) from an amount payable to another party to the contract (party B) as security for the performance of party B’s obligations under the contract.”

Questions

