

# New Works and Services Contract

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## 1. Short History of The New Works and Services Contract

During 1992, Allen Allen & Hemsley's Construction & Arbitration Department, under the direction of Stephen Hibbert, carried out a research and development programme into a new form of contract that would meet the needs of the construction and development community in the 90's.

The reference material used included the (draft) New Engineering Contract, developed and published by the Institute of Civil Engineers in Britain, and a new short form of agreement developed by Max Abrahamson (construction lawyer and author of Abrahamson, Engineering Law and the ICE Contracts).

There was extensive consultation with proprietors, contractors and consultants throughout industry; with Max Abrahamson and Dr Martin Barnes (Chairman of the Committee preparing the New Engineering Contract) and with a number of members of public construction or procurement agencies in New South Wales.

The contract was first published in draft towards the end of 1992 and has thereafter undergone an intense period of scrutiny by prospective public and private sector users.

It is to be published by Standards Australia as a Miscellaneous Publication (with an associated update and review service) during 1993.

## 2. Underlying Philosophy of the Contract

The philosophy of the New Works and Services Contract is best illustrated by reference to its primary objectives, viz:

- **Coordination** - a contract system which may be used for contractors, consultants, project and construction managers and operators on a project - facilitating consistency in descriptions of responsibilities, tasks and obligations, time periods, notices and procedures.
- **Flexibility on procurement style** - a contract which facilitates different procurement styles, viz design and construct; design, novate and construct; project/construction manage and traditional construct only.
- **Project efficiency** - is influenced and enhanced by clear, simple documents and the arrangement of contractual provisions consistent with the way in which projects are actually administered and carried out.
- **Good communications** - the introduction of an "Alert-

ing" process to facilitate constructive communications between contractor and principal, without fear of contractual penalty.

- **Attitudes** - in recognising that the general conditions of contract act as the commercial and administrative centrepiece of most major projects the New Works and Services Contract requires the parties to promise not only to perform all agreed duties but, importantly, to "act in good faith".
- **Better identification and allocation of risks and responsibilities** - one of the central themes of the New Works and Services Contract is to facilitate tailoring a contract to a project by using an extensive set of "particulars" (akin to traditional contract annexures). The New Works and Services Contract includes, for example, a schedule of delay events and associated delay costs which need to be completed or agreed upon by the parties for each particular contract.
- **The needs of financiers** - a recognition of the needs of financiers has resulted in a contract pricing, progress claim and payment procedure with these features:
  - flexibility to accommodate a range of pricing styles (lump sum, schedule of rates; costs plus; Guaranteed Maximum Price;
  - a single, central concept of the Contract Price which, at any particular time, represents the total amount payable to the contractor;
  - a more extensive form of financial reporting in the contractor's progress claims.
- **More generic** - the contract has been described as one which is more flexible than others. It does not suffer, so much, from adopting risk allocation positions within its terms but rather provides a detailed framework for risk issues to be identified and managed in a constructive rather than adversarial way.

## 3. Overview of The New Works and Services Contract

### Services or Works

The New Works and Services Contract can be used singularly for the procurement of professional services or construction or project related services such as:

- feasibility studies;
  - engineering design services;
  - quantity surveying services;
  - construction/project management services,
- or as a "project" contract by which the same form of

document (with appropriate amendments) is used to engage all consultants, contractors and managers on a particular project.

The New Works and Services Contract is suitable for the traditional construct/build only model - but retains the flexibility to enable the contractor's scope of work to be increased to include design; design development and design, novate and construct - where required.

The diagrammatic depiction of the contents of the New Works and Services Contract (see below) shows how the "core" sections of the general conditions (Sections 2-7) apply to all users and are matched or combined with one or more of Sections 8, 9, 10 and 12 (Preconstruction; Management; Construction and Post Construction) - depending on which one or more applies as stated in the particulars.

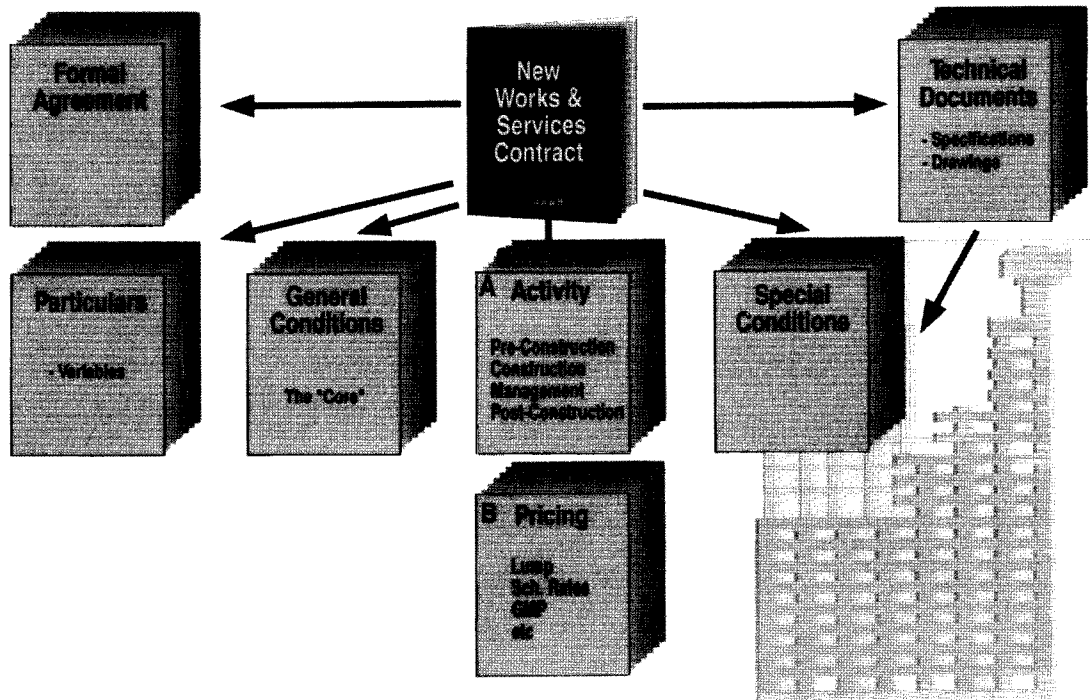
For example a design and construct contract will state in the particulars that Sections 8 and 10 apply (together with the other, related core general conditions).

An important benefit of using this document as a project document is that, say, a construction manager's obligations will be expressed in the same language and in the same manner as those of the primary contractor - albeit the particular services will be different. There are significant benefits for principals in this approach in administering projects.

The New Works and Services Contract utilises contract pricing schedules and activity schedules which detail the particular tasks to be carried out by the contractor and the particular contract pricing to be used.

The particulars permit principals (and for that matter contractors) to tailor contract documents without necessarily committing radical surgery on the general conditions. Importantly, major risk allocation issues (such as time; delay costs and latent conditions) are raised clearly in the particulars, permitting the parties to address the issues on an open and commercially realistic basis.

## New Works and Services Contract - Structure



The sections provide as follows:

**Particulars**

1. People
2. Documents
3. Activities
4. Commercial
5. Programming and time
6. Interpretation

**General Conditions**

2. Definitions and Interpretation
3. Main Obligations
- 4A Commercial
- 4B Risks and Insurance
5. Administration
6. Statutory Requirements, Safety, Quality and Testing
7. Programming and Time

- \*8. Pre-construction
- \*9. Management
- \*10. Construction

11. Handover and Completion

\*12. Post-construction

13. Default, Insolvency and Termination
14. Disputes

**\*Activity Schedules**

- 1 - Pre-Construction
- 2 - Management
- 3 - Construction
- 4 - Post-Construction
- 5 - Take-over

Contract Pricing Schedules  
 Special Conditions  
 Technical Documents

\*Apply Where Completed in Particulars.

**Good Faith**

One of the most significant features of the New Works and Services Contract is that it asks the parties to agree, in writing, to act in "good faith".

Good faith as a legal concept is not new to English or Australian law - it has been mentioned by a number of judges, over the years, as a relevant or governing principle applicable to all contracts and dealings. Yet, unlike French, German and American law, there is no positive duty in Australian Law to perform contracts in good faith.

The recent New South Wales Court of Appeal decision in *Renard Constructions v Minister for Public Works* (1992) 26 NSWLR 234; 1993 9BCL40 has now put more squarely at the foot of contract drafters the issue of "good faith" and its commercial consequences. In *Renard* the Court of Appeal noted that the requirement of a principal

to act reasonably in considering whether or not to terminate a contractor's work had "*much in common with the notions of "good faith" and "that the time may be fast approaching when the idea (of good faith) long recognised as implicit in the orthodox techniques of solving contractual disputes, will gain explicit recognition in the same way as it has in Europe and the United States"*".

Separately, the debate surrounding a partnering approach to the procurement of construction projects has put the spotlight on the doctrine of good faith. The American legal system - from where partnering is being imported - has a codified concept of good faith as part of its contract law. In many ways the principles of partnering - better communications; agreed, mutual objectives; minimising disputes - may be seen as derivatives of the good faith doctrine.

Accordingly, if the Australian construction community wishes to adopt partnering - either wholly or in principle, it is likely that the doctrine of good faith may be the necessary bridge between the contract and the partnering charter.

Good faith, however, is a difficult concept to define. There is considerable debate as to whether it acts only passively - to impose on parties to a contract, in certain instances, an obligation to act "reasonably" - or actively, by which it "fills the gaps" where contractual obligations are not written completely or clearly, but the spirit or intention of the contract or a particular provision is clear.

Today there are significant commercial pressures on both contract law and contract documents to:

- (a) better codify the parties' relationship - the traditional "black letter" approach to contracts and their interpretation, whilst legally consistent, is often justifiably criticised by those in commerce as keeping the lawyers busy finding loopholes yet not properly representing the parties' expectations; and
- (b) address issues now covered by statute such as the Trade Practices Act (ss.52 and 53) so that the contract better expresses and regulates not only the essential terms of the bargain but also the essential aspects of the parties' conduct, which will be necessary to make the contract work.

It seems there are three ways to make the concept of good faith part of a commercial contract, viz:

1. Agree to "act in good faith" - only.
2. Agree to act in good faith and define that term as it applies to the particular contract.
3. Agree so to act and incorporate by reference a "code" of good faith - on the basis that the "code" will have application on each occasion the parties contract.

The New Works and Services Contract adopts the second - a statement of agreement and accompanying definition. Part of Clause 3's statement of Main Obligations is a promise by each of the parties to:

- perform or agree duties
- act in good faith
- cooperate

The accompanying relevant definition is as follows:

"Good faith includes:

- being fair, reasonable and honest
- doing all things reasonably expected by the other party and the contract"

Finally the good faith concept and, if the New Works and Services Contract is used, express promise will form a more appropriate basis for the development of partnering projects than exists in other standard form contracts. As a contractual doctrine it better represents what the parties to a partnering project are trying to achieve and provides an all important contractual recognition of the "non-legal - non-binding" partnering charter principles.

**4. Specific Matters Addressed by The Contract**

**4.1 Certainty vs Flexibility  
(with particular attention to risk allocation)**

**Generally**

The New Works and Services Contract is significantly less "wordy" than other documents. It achieves this result two ways, viz:

- (a) by writing the text in a modern, succinct style; recognising the value to be gained by comprehensive definitions;
- (b) recognising that many issues are better addressed in detail in specifications, or even special conditions, than in the general conditions. This procedure permits the general conditions to act more "generically" and minimises amendments from project to project or, within a project, between contracts.

The New Works and Services Contract is a complete document in that it covers all of the issues a modern construction contract should address.

The traditional difficulty of performance contracts adequately covering all tasks and things to be carried out by the contractor has been addressed in the New Works and Services Contract by first defining the term Activity as follows:

**"Activity**

All things or tasks to be done, obtained, carried out, performed or completed (including the selection of plant and equipment, systems, methods, materials and products)

all materials, equipment, plant, goods, designs, work and services, temporary and permanent to be used, achieved or supplied or necessary to carry out and complete a task".

Thereafter, the contract contains a number of Activity schedules which relate to preconstruction; construction;

management and post construction work. These are the detailed performance obligations tailored to each specific project.

In the general conditions, particular responsibilities of the contractor are defined as follows:

**"Construction**

All Activities

- required by the Contract
- necessary

to

- carry out, construct and complete the Works
- complete the Construction Stages

in accordance with

- the Design Documents
- the Construction Documentation".

**"Design**

All Activities

- required by the Contract
- necessary

to

- design the Works
- complete a Design Stage
- produce Design Documents

in accordance with

- the Brief
- the Concept Design".

**Flexibility**

The New Works and Services Contract adopts certain risk allocation positions (provided that risk allocation is what the parties require), as indicated by completing the Particulars. For example, Clause 10.3 deals with latent conditions in the following manner:

**"10.3.1 Latent Conditions**

If this clause 10.3 applies -

where the Contractor encounters on the Site sub-surface ground conditions not

- anticipated by the Contractor
- capable of being anticipated by a contractor competent and experienced in the performance of Activities of the kind and character of the Contractor's Activities

(a "Latent Condition")

the Contractor shall immediately give the Principal's Representative an Alert".

Extra costs for latent conditions are recoverable provided, in the first instance, Clause 10.3 applies, which is a decision made by the principal when completing the Particulars or by the parties during contract negotiation.

Similarly, the particulars provide for a "delay" table as follows:

**Delay Table**

<p><b>Delaying event or circumstance</b></p>	<p><b>% of time delayed subject to an extension of time</b></p>	<p><b>% of delay costs payable for time extended</b></p>
<p>(a) delay in receipt of Approvals</p> <p>(b) failure by the Principal to give the Contractor possession of sufficient of the Site to carry out and complete the Contractor's Activities in accordance with the Contract</p> <p>(c) disputes with or proceedings being taken or threatened by adjacent or neighbouring owners</p> <p>(d) civil commotion or industrial disputation beyond the Contractor's control which is:</p> <p style="padding-left: 20px;">(i) Site-specific</p> <p style="padding-left: 20px;">(ii) non-Site specific</p> <p>(e) weather</p> <p style="padding-left: 20px;">(i) inclement</p> <p style="padding-left: 20px;">(ii) conditions resulting from inclement or</p> <p style="padding-left: 20px;">(iii) other conditions _____</p> <p style="padding-left: 20px;">_____</p> <p>(f) delays caused by the Principal or by its Representative, employees, consultants, agents, or other contractors provided that the originating cause of the delay does, or did, not originate from an act, omission or default of the Contractor, its Representative, employees or agents or contractors engaged by the Contractor</p> <p>(g) Latent Conditions (clause 10.3)</p> <p>(h) any other matter, cause or thing beyond the Contractor's control, which is not expressly dealt with elsewhere in the Contract.</p>	<p>(i)</p> <p>(ii)</p> <p>(i)</p> <p>(ii)</p> <p>(iii)</p>	<p>(i)</p> <p>(ii)</p> <p>(i)</p> <p>(ii)</p> <p>(iii)</p>

One of the important features of the New Works & Services Contract is its flexibility in accommodating different procurement styles and services within a consistent framework. By establishing a "core" set of general conditions (but also general conditions which apply to design, management and construction activities) the form of contract applies to designers and contractors alike. From a principal's perspective, one form of conditions can be consistently used throughout a project for various parties with whom it contracts.

For consultants, the core commercial terms of their agreement match those of the contractor, to the extent they are made applicable by the particulars, and the provision of their services is far more integrated between consultants and between consultant and contractor.

For contractors, the New Works & Services Contract seeks to "match the market" in that it permits contractors to deal with risk, commercial variables such as contract price, security and matters such as programming and time in a creative and innovative way through the Particulars.

**4.2 Management**

**Time**

The New Works and Services Contract approaches the issues of programming and time in a new and comprehensive manner.

First, in the Particulars "upfront" programming and time related information is more extensive. They seek (or provide for) details of the following:

- (a) dates or periods for the submission of the first programme and related documents;
- (b) dates for the commencement, handover and completion of each principal or sub activity;
- (c) dates for the completion of key events or stages.

Secondly, the quality of programming information is not left open. It is specified in detail through the definition of Programme Format which is as follows:

**"Programme Format**

The format and content of each programme of the Contractor's Activities submitted by the Contractor to the Principal's Representative as required by the

- Contract
- Technical Documents
- Principal's Representative

showing

- for all
  - . Activities and parts
  - . Portions
  - . Stages

weekly time scales

their order and duration

the inter-relationship between them

in accordance with

- . Contract dates for Handover and

- . Completion
- . Key Events

- networks, including critical path networks
- contractor, supplier and consultant activities and their current and anticipated rates of progress
  - current critical paths of, and float in, the Contractor's Activities
  - actual versus planned progress and status of Activities
  - impact and potential impact of any delaying events or circumstances
  - dates or periods for, and the nature of, supply, input, instructions or decisions by the Principal or the Principal's Representative".

Thirdly, as can be seen from the diagrammatic table of contents, Section 7 of the General Conditions is devoted to programming and time - related issues. The section addresses programming in an extensive and detailed way, making express provision for:

- programme submission (in Programme Format);
- programme acceptance;
- programme compliance;
- alterations to the accepted programme;
- an appropriate caveat that acceptance of the contractor's programme does not alter or relieve it from its primary obligations.

Fourthly, the time-related provisions raise a number of issues not found in other standard form contracts such as:

1. The programme (once accepted) plays a significant and continuous contractual role.

It can be seen from the definition of Programme Format that the New Works and Services Contract requires the contractor to show, amongst other things:

- current critical paths and float in the contractor's activities;
- actual versus planned progress;
- dates or periods for the supply and the nature of instructions from the principal or the principal's representative.

2. Delay causes, extensions of time and any associated delay costs are addressed in the New Works and Services Contract in two sections, viz:

- (a) firstly, in the Particulars (as noted above) there is a draft or base schedule of delaying events, percentage of time delayed subject to an extension of time and percentage of delay costs payable for time extended. The New Works and Services Contract does not adopt a position on each or any of these issues. While

the schedule is not exhaustive - it may be added to or amended by the parties;

(b) secondly, in Section 7 there is an extensive set of provisions relating to delay, extensions of time and delay costs. The position adopted by the New Works and Services Contract is reasonably traditional in that, in summary, Clauses 7.3-7.7 provide for:

- notification of likely delay (by way of the giving of an Alert);
- entitlement to an extension of time for a permitted cause provided that:
  - an application is made in accordance with the contract;
  - the contractor has applied with the alerting and early warning and programme submission procedures;
  - the relevant delaying event is "critical" in that it causes a delay in reaching the relevant due date;
  - the contractor has taken reasonable steps to avoid or mitigate the cause of delay;
  - the reserved independent power in the principal's representative to extend time; and
  - the contractor to be entitled to costs (where so permitted) corresponding to an appropriate cause of delay and consequent extension of time.

3. The New Works and Services Contract does not expressly provide for acceleration - or vest such a power in the principal's representative.

4. The general philosophy of the New Works and Services Contract - in the context of programming and time is to instill a more sophisticated "upfront" programming base in a project - to the extent made applicable by the Particulars - permitting the programming information to be a useful and constructive management tool.

**Cost**

The New Works and Services Contract makes some important new inroads into cost control and contract price procedures.

Firstly, it establishes a concept of the Contract Price defined as:

**"Contract Price (\$CP)**

The sum

- payable to the Contractor for the Contractor's Activities
- calculated and adjusted in accordance with the applicable Contract Pricing Schedule".

Secondly, the Contract Price is adjusted on occasions with additional or less money becoming payable to the contractor with the result that, at any instance, the principal's entire financial obligations are measured by reference

to the Contract Price.

Thirdly, the New Works and Services Contract takes the detailed pricing mechanism (whether it be lump sum, schedule of rates - with or without bills of quantities or something else) out of the general conditions and puts those matters into a set of contract pricing schedules. This procedure permits the core conditions to remain constant while contract pricing mechanisms vary from project to project or within a project, from consultant to contractor.

Fourthly, the New Works and Services Contract groups commercial matters (including price) in Section 4A which is consistent with the administration procedures adopted by both contractors and principals whereby commercial matters are treated as an individual discipline - separate to programming and time, design or quality.

Fifthly, the New Works and Services Contract requires significant detail in the contractor's progress statements for the purpose of not only making each progress statement a more open and constructive document but also to require the contractor (which may include consultant) to progressively report on variances - actual or likely - to contract price and on matters such as anticipated "cost to complete".

By way of illustration, each progress statement must include a statement by the contractor of:

- the contractor's current estimate and particulars of the estimate of
  - the percentage of the contractor's activities completed
  - the final contract price
  - future, including unclaimed, adjustments to the contract price.

The progress statement procedure also uses the definition and concept of Related Documents. This mechanism is adopted throughout the contract in conjunction with the submission by the contractor of information at any particular stage. Related Documents are defined as follows:

**"Related Documents**

All documents produced, used or obtained by, or on behalf of, the Contractor

- necessary to review, approve or understand a Contractor's Activity
- requested by the Principal's Representative; or
- required by the Contract".

The New Works and Services Contract recognises that often an initial submission by a contractor (here dealing with price) may not provide sufficient information to permit the principal's representative to make an appropriate decision. Rather than have some form of extra-contractual request by the principal's representatives which may or may not be responded to cooperatively by the contractor, the New Works and Services Contract "writes in" an obligation on the contractor to provide Related Documents with its progress statement. The procedure is particularly important where pricing procedures include provisional sums or prime cost items; delay costs or extra contractual costs; or any element of cost recovery or

reimbursement.

The New Works and Services Contract permits progress statements and payments to be made at intervals or by methods chosen by the parties. This accommodates the increasingly important requirements of financiers.

### Quality

The New Works and Services Contract has a specific "quality standards" provision which states as follows:

#### "6.3.1 Quality Standards

The Contractor's Activities shall

- meet the quality systems and standards required by the Contract
- be suitable and fit for their purpose
- be produced or carried out using proper professional skill care and judgement
- meet all Contract requirements".

Clause 6.3.1 (Quality Standards) firstly seeks to recognise and facilitate the application of a "quality systems" approach as required by Australian Standard 3901.

Secondly, it imposes a quality test of "suitable and fit for purpose". There is considerable debate between consultants and proprietors and amongst contractors who accept design obligations as to whether or not it is fair and reasonable for them to warrant that their work will produce a product which is "suitable and fit for its purpose". In the context, however, of the current trend towards performance based contracts it is a standard which is generally expected by most principals or end-users.

Thirdly, Clause 6.3.1 requires the contractor's activities to "meet all contract requirements" thereby permitting further detailed quality issues to be addressed in the special conditions and technical documents.

The New Works and Services Contract provides for two types of testing - routine and special. Routine testing, unlike special testing, is not defined. The approach adopted is that the volume and nature of testing will be determined by appropriate standards and quality systems.

Special tests are those carried out at the principal's representative's request. If the tests prove satisfactory the cost of testing is to the principal's account.

The New Works and Services Contract permits non-complying Activities to remain uncorrected where the Principal permits - accompanied by, where appropriate, a reduction in the contract price.

### Communications Between the Parties

The New Works and Services Contract facilitates and enhances constructive communication between the parties at a number of levels.

First, the style, format and language of the contract has been designed to facilitate comprehension, ease of reading and thereby compliance. Allens' research showed that "readability" and understanding were enhanced by text:

- about 40 characters wide
- with each line a discrete proposition
- with sufficient "white space" in and around

- the text so that the eye can rest between lines
- using a type size and style shown in the document

### Alerting

The New Works and Services Contract establishes two primary levels of communication - the first facilitates constructive, non-penal communications between contractor and principal. The second maintains the traditional "base" communications (notices of potential claims; notice of delay, latent conditions; notice of default and disputes).

The top layer or first level of communications centres around the concept of an "Alert".

An Alert is defined as follows:

#### "Alert

A written statement

- identifying the event or circumstance
- identifying the actual, or likely, time and cost implications to the Contractor and Principal of it
- stating actions each party should take to avoid, mitigate, encourage, or take advantage of the consequences of it
- stating other information necessary to permit the Principal's Representative to assess the issue and make a decision about it".

It is a definition which is used wherever the contractor is obliged to notify the principal about changed circumstances or events.

Separately, however in Section 5 (Administration) there is a simple but effective alerting process with these elements:

- If the contractor becomes aware of an actual or likely event which may adversely affect his activities he must give the principal's representative an alert.
- The representatives of each party thereafter promptly confer to discuss the alert and how it should be dealt with.
- The principal's representative makes an assessment of what, if anything, should be done and informs the contractor of any actions to be taken.

These provisions, combined with the form of alert required by the contract, make it a process which encourages resolving issues which inevitably arise on projects as opposed to the more traditional approach of either party protecting its own interests.

Separately, the New Works and Services Contract recognises the benefits of regular, planned interaction between parties. It therefore makes provision in Clause 5.2 for planning and review meetings. These "Project Control Group" type meetings are scheduled and directed by the principal's representative but must include on the agenda matters such as contractor's activities; the principal's duties; programming; costs; quality; current alerts.



**4.3 Role of the Superintendent**

The New Works and Services Contract no longer maintains a superintendent - so called. Each party - principal and contractor - appoints a representative. There is a facility for more than one representative for the principal which is important where the principal wishes to appoint different representatives for different sections of the project.

The role of the superintendent has suffered significant criticism. Often the tasks assigned to superintendents have exceeded their expertise, as they can range across design, construction, quality and maintenance, together with dispute resolution.

The New Works and Services Contract effectively makes the parties to the contract deal with each other. The Principal's Representative does continue to assess and certify the contractor's progress statements and to assess and grant extensions of time and to that extent retains an obligation to act fairly.

**4.4 Management of Provisional Sum Items**

There are two elements to the management of provisional sum items, viz:

- (a) the identification of contract price components or elements of the contract works which are to "provisional" (or PC items); and
- (b) a procedure in the general conditions to facilitate selection by the principal of a chosen subcontract or supplier.

The New Works and Services Contract addresses the first (contract pricing) in the contract pricing schedules.

Secondly, the general conditions provide for the principal to select certain subcontractors in the following terms:

**"4A 3.3 Principal's selection**

Except where the Contractor reasonably objects the Contractor shall

enter into subcontracts for part or parts of the Contractor's Activities

with subcontractors selected by the Principal

If a selected subcontractor

- defaults
- is terminated

the Principal is not obliged to re-select".

**4.5 Security Arrangements**

The New Works and Services Contract adopts a modern but nonetheless reasonably traditional approach to security.

First, the contract permits security to be in one of three forms, viz:

- (a) cash (from the contractor);
- (b) bank guarantees (whether from contractor or principal); and

- (c) third party guarantees (again, whether from principal or contractor) from parent or related companies.

The essential elements of the security scheme in the New Works and Services Contract are as follows:

- (i) The form and nature of security is agreed between the parties in the Particulars at the time of contract formation.
- (ii) Once security has been provided there are procedures for its conversion, use and ultimate release.

Conversion of security is addressed as follows:

**"4A 1.2 Conversion of Security**

Non-cash Security may be converted to cash and used

any time where

- arising from the Project the provider of the Security owes the other party money, as a debt or damages, or
- the Contract permits

**"4A 1.3 Use of Security**

Security shall only be used for the purposes for which it was provided".

- (d) Cash security and retention is held in trust, in joint names of the parties by the principal's representative and any interest is shared equally.

**4.6 Dispute Resolution Procedures**

The New Works and Services Contract approaches the management of claims and dispute resolution at two levels.

First, through the administrative procedures in the general conditions there is an extensive degree of interaction between contracting parties and a number of contractual "prompts" regularly put issues before the parties to be addressed. For example, the base agenda for the Project Control Group meetings in Clause 5.2.3 includes the "parties obligations" and "current alerts".

Secondly, the New Works and Services Contract recognises that, notwithstanding the other provisions in the general conditions there may ultimately be grounds for one party being in dispute with the other. There is therefore a formal dispute resolution procedure. It also has innovations. Traditional dispute clauses suffer from the need for one party or the other to acknowledge that there is in fact a "dispute" in existence. Many projects have suffered from one party being dissatisfied with the others behaviour yet not feeling that it is quite at the stage of formally notifying of a dispute.

Clause 14.1 in the New Works and Services Contract facilitates quick resolution of issues by a twofold approach. At the formation stage, a dispute exists when one party is dissatisfied with the other party's behaviour and

the party requires that when the issue be resolved. If those conditions are satisfied there must be notification of the dispute and the matter goes to the representatives for consideration.

By a second stage "ADR" type procedure, Clause 14.3 requires senior representatives of each party to meet if the ordinary representatives cannot resolve the issue. Importantly the New Works and Services Contract states:

"Each Senior Representative who attends (a meeting to discuss the issue) is hereby so authorised (to settle or resolve the matter at issue)."

If the dispute remains unresolved the New Works and Services Contract permits either party to refer the matter to arbitration in accordance with the Rules of the Conduct of Commercial Arbitration of the Institute of Arbitrators, Australia.

## 5. Conclusion

The New Works and Services Contract started from a "clean sheet" with the objective of representing in a contract document the way in which projects are actually put together and carried out.

The traditional form of style, language and grouping of issues was replaced by a modern, fresh, easy to understand format.

Consultants, contractors, construction or project managers can be retained on projects on consistent terms and procedures - each understanding the other's contract obligations and how they are intended to work together. □