

Upcoming Updates to the Standard Building Construction and Maintenance Contracts

What is Changing?

Replacement Contract	Current Contract
Construct Only Lump Sum contract	AS2124 Special Conditions of Contract
Design and Construct Lump Sum contract	AS4300 Special Conditions of Contract
Modular contract	AS4300 – Modular – Special Conditions of Contract

What does this mean?

- The Replacement Contracts are replacements of the respective AS2124 or AS4300 Special Conditions of Contract (Current Contracts).
- The alignment of the Replacement Contracts to the respective Current Contracts means that there are minimal changes to contract administration (refer below).

Key Features and Benefits

- One document – no more Special Conditions of Contract, making the Replacement Contracts easier to read and more accessible (e.g. no longer needing to be read in conjunction with the General Conditions of Contract).
- Contemporary drafting – easier to understand but remains contractually sound.
- Shorter and simpler – operational clauses are shorter and simpler as a result of relocating:
 - detailed policy requirements and subcontracting requirements to Schedules
 - definitions that were previously within particular clauses to the Defined Terms and Interpretation clause.
- Modernised provisions – e.g. provisions that address electronic document formats.
- Numbered clause paragraphs – numbering now makes clauses easier to read and reference.
- Same clause order – most clauses remain in the same order so that the clause numbering stays the same, ensuring that the Replacement Contracts feel familiar to users.

Minor Changes to Familiar Provisions

While the Replacement Contracts are largely unchanged from the Current Contracts the following sets out some things to be mindful of, including minor changes to familiar provisions which enhance structure and provide greater certainty in contract administration. For example:

- Defined Terms and Interpretation (clause 2):
 - Definitions that were previously within particular clauses have been moved to the Defined Terms and Interpretation clause.
- Warranties (clause 3):
 - The Replacement Contracts contain warranties in the Conditions of Contract which are back-to-back with those in the Conditions of Tender.
- Security (clause 5):
 - Security is now a defined term which includes retention moneys and unconditional undertakings. Where a provision only talks to one form of security, this is clearly identified in the drafting (e.g. where the contract only talks to unconditional undertakings, “Security (other than retention moneys)” is used.
 - Drafting is simplified and consolidated, in that all security provisions (e.g. recourse to security and set off) are included in the same clause.
- Contract Documents and Notices (clauses 7 & 8):
 - Incorporates modernised provisions with regard to proprietary document management systems, email and notices under the contract.
 - As a result, there are changes to the Annexure, in that:
 - There are additional items requiring completion (e.g. nominating email addresses for the appropriate delegate of the principal and for the superintendent, and nomination of whether a proprietary document management system is to be used)
 - There is no longer an item for the number of copies of documents, reflecting the modernising of the document format to electronic. However, note that the Replacement Contracts provide that other requirements can be specified (e.g. in project specific documentation).
 - There is no longer an Annexure item for the time for the superintendent’s direction as to the suitability of the contractor’s documents – the time is the same as the default time under the Current Contracts.
- Errors, Ambiguities and Discrepancies (clause 8.3):
 - There are now timeframes for the parties to notify of errors, ambiguities or discrepancies they discover or are made aware of, and for the superintendent to provide the interpretation of an error, ambiguity or discrepancy having discovered or been made aware of it.

- Subcontracting (clauses 9 & 10):
 - Some subcontracting requirements are moved to a Schedule which makes the operational requirements clearer.
 - Provision for nominated subcontractors has been removed but provision for (one or more) selected subcontractors remains.
- Insurance (clauses 18, 19 and 20):
 - Works insurance and public liability insurance now have the option to be either principal or contractor arranged, which is nominated in the Annexure.
 - As such, the works insurance and public liability insurance requirements are under different clause headings – there is a principal arranged insurance clause and a contractor arranged insurance clause, both of which cover the respective parties' requirements for works insurance and public liability insurance, as applicable. The default option in the Annexure is the contractor.
 - However, the same party does not need to be responsible for both insurance types – for example, the principal could be responsible for effecting works insurance and the contractor responsible for effecting public liability insurance, and vice versa.
 - The calculation of the value of Works Insurance is now drafted into the contract and there are no longer Annexure items to be completed in relation to this.
 - Requirements for other types of insurance which do not have the option for being arranged by the principal (i.e. only the contractor is responsible for effecting them) are under the 'Other Insurance' clause.
 - The Construct Only Contract makes provision for the contractor to be required to effect a professional indemnity insurance policy to cover the design of temporary works. This requirement is to be nominated in the Annexure.
- Program (clause 33.1):
 - The program clause now specifies in detail the information that must be shown in the program, which is consistent with the type of detail one would expect to see in a construction program and ensures that the program to be supplied by the contractor is actually useful.
 - There is also a requirement for the contractor to provide updated programs at the times stated in the Annexure. As such, there is a new Annexure item requiring completion to reflect this.
- Delay Costs (clause 36):
 - There are no longer alternatives and the default position under the Current Contract has been drafted into the Replacement Contracts.
- Variations (clause 40.1):
 - There is now a process (and associated timeframes) for where the contractor considers that a direction by the superintendent in whole or in part constitutes a variation, which requires a response from the superintendent (acting as certifier).

- Certificates and Payment (clause 42):
 - There are some improvements to the drafting of the 'Certificates and Payments' clause which sets out a more detailed process of making and responding to payment claims. The provisions better align with the requirements of the BIF Act, including changes to the terminology used in the contract (e.g. Payment Schedule instead of Payment Certificate). However, timeframes have not changed.
- Unfixed Plant and Materials (clause 42.4):
 - Drafting has been improved to better reflect practice, which includes no longer requiring alternatives to be chosen in the Annexure.
- Claims (clause 46):
 - This clause sets out a clearer process for making and assessing claims, providing more structure and aligning with proper practice, including requiring the superintendent (acting as certifier) to assess the claim and make a determination before the claim can be disputed under clause 47. Timeframes apply for making and assessing claims.
- Dispute Resolution (clause 47):
 - In light of the clearer claims process, there are no longer alternatives for the dispute resolution process.
- New Queensland Government Policies Schedule
 - A new schedule has been added for Queensland Government policy obligations which were previously embedded throughout the clauses of the contracts. This enables policy requirements to be consolidated into one place, providing for clearer and simpler operational clauses and less disruption when amendments are required (e.g. by minimising the need to change clause numbers).