

'A State of the Art Government Contract to Reflect State of the Art Technology ?'

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When selling computers to the Commonwealth Government, Suppliers are required to comply with the contract conditions issued by the Department of Administrative Services and embodied in the Commonwealth's Pro forma Request for Tender.

The industry generally believes the 'Agreement' embodied in the RFT falls short of properly addressing the complex legal and technical issues involved and, by abandoning commercially acceptable terms such as those limiting liability and excluding consequential damages, it bends too far in favour of a buyer who is seen as taking unfair advantage of its purchasing power.

A committee of Suppliers' in-house lawyers and contract executives from Burroughs, Amdahl, Sperry, IBM, Wang, Digital and Prime have been negotiating with and working on a submission to the Government based on the Commonwealth's familiar 'Proforma M' for the acquisition of computer systems and facilities.

It is hoped to bring the Government back to basics by treating separately in the Agreement those conditions for the sale and maintenance of hardware; for software and for services and not, as is presently the case, bundling them together under the generic term 'Equipment'. By treating each different set of issues separately it is hoped to avoid the sometimes tortuous assaults on logic presently imposed so that in the event of a breach, the legal outcome could be better predicted.

Though the Commonwealth presently defined the 'Life of Equipment' as being ten years, it is generally felt that five years is more realistic. Indeed the Taxation Department would seem to share this view. Terms like 'Scheduled Preventative Maintenance' may disappear as modern generation maintenance functions such as self-diagnostics and remote diagnostics made the concept of scheduling preventative maintenance obsolete.

A more reasonable approach to the question of liquidated damages and greater flexibility in the areas of warranty and software licencing are also being sought. Given the goodwill among senior members of the Department of Administrative Services it may not be too much longer before we see a simpler and more efficient standard government contract that both the Government and the Supplier can look to and know its interests are being protected.

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CORPORATE LAWYERS ASSOCIATION

The Corporate Lawyers Association of New South Wales has about 150 members most of whom are in-house lawyers employed by corporations. It meets to discuss recent legal developments and is interested in the role of corporate lawyers.

The Association will be holding its inaugural one-day conference in Sydney on 25 September 1985. Speakers will include prominent lawyers from Australia and overseas.

Proposed topics include:

- 1 The role of corporate lawyers - the views of management, in-house lawyers and external lawyers;
- 2 Developments overseas in the role of corporate lawyers;
- 3 Future trends in relevant areas of law;
- 4 When can the authorities get hold of company documents and the professional privilege of in-house lawyers;
- 5 How to best use external lawyers.

Persons wishing to receive a brochure and registration form in due course should contact David Newton on (02) 439 6999. Membership application forms are available from Andrew Horsley on (02) 236 2655.