

Contracts

The JCC 1993 Contract

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The Joint Contracts Committee (JCC), which has as its members the Royal Australian Institute of Architects, the Master Builders' Australia Incorporated and the Building Owners and Managers Association of Australia Ltd, has recently published amended JCC contracts.

The JCC contracts were first published in 1985. They were the successor to the Major Building Works Contract (MBW-1) and were published in two versions - the JCC-A for use where bills of quantities were to form part of the contract and the JCC-B for use where bills of quantities were not to form part of the contract. Companion sub-contracts, the SCJCC-A and SCJCC-B, were also published.

The JCC contracts have now been substantially amended and republished as the JCC-C 1993 (first edition - March 1993) and the JCC-D 1993 (first edition - July 1993). These two forms follow their predecessors, with the JCC-C being suggested for use where bills of quantities are part of the contract and JCC-D where bills of quantities are not part of the contract.

The major changes introduced in the new documents are:

- the introduction of staged practical completion as an option within the agreement;
- the amendment of the insurance provisions;
- the introduction of negotiation between the parties in the event of a dispute before resorting to litigation or arbitration; and
- a change in how the variable content of the agreement is handled.

Staged Completion

The new JCC contracts, in their unamended form, now permit staged completion. Previously, special conditions were required to provide for staged completion.

The principal provisions relating to staged completion are contained in clause 6.13, which looks very similar to the special conditions that might previously have been used for the purpose. The clause also achieves its objective in the same way special conditions did and thus has the same jigsaw-like disadvantage that special conditions previously had. The major advantage of clause 6.13 is that the users of the contract can now become familiar with the particular jigsaw.

The key to bringing into effect the staged completion provision is Item B4 of the Appendix. This item contains an optional part, which allows for the description of the stages.

There is also the opportunity in the Appendix to describe different liquidated damages for the various stages.

Where there is to be staged practical completion, the proprietor must put insurance in place. Initially, the insurance must cover the whole of the works, but as each stage is completed insurance only needs to exist for the incomplete stages of the works.

• Possession of the Site

In the case of staged completion, the builder's entitlement to possession of that part of the site "...affected or constituted..." by a particular stage ceases when that stage reaches practical completion or when the proprietor takes possession of the particular stage.

Similarly, the proprietor is entitled to retake possession of the site on a stage-by-stage basis as each stage is completed or deemed to have been completed.

If the proprietor occupies or uses any particular stage prior to practical completion, and is not entitled to do so, then only that particular stage is deemed to be practically completed.

• Defects liability

The defects liability period applies separately to each particular stage. There is no provision for a different defects liability period for different stages of the works.

Insurance

The insurance provisions in the 1993 contracts look quite different from those in the earlier versions. However, in most respects, the effect of the provisions is substantially the same.

In the earlier contracts the insurance provisions varied in form as well as in substance depending on whether the proprietor or the builder was taking out the insurance. In the new contracts, the two options now appear very similar in form and deal with issues on a corresponding clause-by-clause basis.

Dispute resolution

Section 13 of the contracts deals with dispute resolution. Previously, this section had contained what appeared to be an arbitration clause, whose effectiveness had been brought into question in a number of decisions. In some cases, it was held that the clause was an option to arbitrate rather than an arbitration clause.

The new contracts now provide for compulsory private negotiation prior to commencing arbitration or litigation.

tion. The procedure that must be followed is described in Figure 1.

Questions about the effect of the dispute resolution procedure still remain, however:

1. Are alternative dispute resolution clauses generally enforceable? This issue has been the subject of much judicial discussion recently and decisions of the courts do not yet show a clear hand.
2. Does the clause, when the appropriate stage is reached, constitute an arbitration agreement within the meaning of the uniform Commercial Arbitration Acts? In our view, it does not.

Variable content

Earlier versions of the contracts allow for project-specific information - i.e., the variable content of the document - to be inserted in a number of places. The new contracts have been structured so that all of the variable information is inserted in the Appendix. This should assist parties to ensure that the contract is completed properly.

As was the case in the earlier versions, users of the contracts can select options in a number of places.

Figure 1

JCC-C 1993 Dispute Resolution Procedure
Section 13

