

MASTER BUILDERS NEW COMMERCIAL BUILDING CONTRACT LSC2

Rowan Evans

Carter Newell

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The Queensland Master Builders Association has now released its new Commercial Building Contract 'LSC2'. The document, dated November 2000 is one of the first industry standard form contracts to expressly set out requirements which are now implied into commercial building contracts in Queensland by virtue of the amendments to the Queensland Building Services Authority Act.

Unlike most commercial building contracts, LSC2 does not create a structure for a Proprietors Representative/Site Superintendent in the administration of the contract. In the writer's opinion, this omission which may have been intended to simplify matters for the Association's members, is likely to result in both parties to the contract expending larger than normal amounts of money in resolving disputes through the contractual dispute resolution provisions.

The Contract, as with the other commercial contracts published by the Association, is only available in carbonised format with the terms on the back of each page. Favourably for the parties' contract administrators the document is succinct, occupying the reverse side of only four A4 pages. However as will be discussed below this brevity may

give rise to greater time and complexity costs than longer, more detailed contracts.

The Contract provides a more favourable scheme for contractors than many other standard form contracts. Notable examples of this include:

- an indemnity from the proprietor to the building in respect of any negligence or breach of statutory duty of the proprietor or its agents and consultants;
- the inclusion of an indemnity from the Proprietor in favour of the Builder against any claim, loss, expense or liability arising out of defects in the design of the works;
- no ability for a Proprietor to set-off any amount claim or amount against, or reduce, any progress payment to the builder under the Contract. That clause does not impede the Proprietor's ability to have recourse to the security moneys;
- the Proprietor expressly charges its interest in the property to secure payments to the builder, with the builder having the ability to require the Proprietor to execute a mortgage to this effect;
- the ability of the Builder to recover from a Proprietor any additional costs created by amendments to statutory requirements after the date of the contract; and
- the automatic inclusion of inclement weather in the contract as an entitlement to an extension of time.

ABSENCE OF A SITE SUPERINTENDENT/ PROPRIETOR'S REPRESENTATIVE

The contract does not provide for the appointment of a Site Superintendent, or equivalent role. The contract prescribes the

party with the ability to determine a contentious construction issue at first instance should do so and thereafter requires the other party to invoke the dispute resolution provisions of the contract should they not agree. While this removes what is often seen to be a blurred line between where the Proprietor's authority ends and where the Superintendent's begins, the omission of this ostensibly independent third party role is likely to increase the number of construction disputes requiring advice from legal representatives.

Such conflict is a given that while a Superintendent had a legal obligation to act fairly and impartially in certifying the works, the parties to the Contract have no such obligations. Indeed the parties have competing commercial interests and it is to be expected that each party will seek to derive maximum benefit to itself from any uncertainty found in the contract.