



Fundamental Concepts and Principles of the Queensland Government's Standard Building Consultancy and Construction Contracts

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FUNDAMENTAL CONCEPTS AND PRINCIPLES OF THE QUEENSLAND GOVERNMENT'S STANDARD BUILDING CONSULTANCY AND CONSTRUCTION CONTRACTS

DISCLAIMER

The Fundamental Concepts and Principles of the Queensland Government's Standard Building Consultancy and Construction Contracts (referred to as the "Contract Fundamentals") provides an overview of the fundamental roles, relationships, principles and concepts relevant to the delivery of building construction projects under the Queensland Government's standard contracts. It is not a comprehensive manual and does not contemplate every circumstance or consideration that may arise. The Contract Fundamentals should not be relied upon for assurance of statutory or policy compliance, nor used for the interpretation of contract documents or as a substitute for specific procurement or contract related advice on building construction matters. Some topics covered in the Contract Fundamentals discuss terms that are defined in the [standard contracts](#) and the definition given to that term in the standard contracts applies, unless the term is given a specific meaning in the Contract Fundamentals, in which case the specific meaning is to be used solely for the purposes of the Contract Fundamentals.

INTRODUCTION

The Queensland Government constructs, owns and renews building assets to support the delivery of services to the people of Queensland.

The design, construction, maintenance, refurbishment or demolition of a building asset typically requires the involvement of building industry consultants, contractors, subcontractors and suppliers, who are engaged under contracts.

Building construction and maintenance in Queensland is governed by both legislative and policy requirements that may place obligations on anyone in the contractual chain including owners, users, principals, designers, certifiers, builders, trade contractors, suppliers, employers and employees.

For more information on the policy environment of building construction and maintenance or for procurement strategy guidance, refer to the [Choosing a procurement strategy for BCM projects and programs](#) webpage.

The [Queensland Government Building Policy Framework – Growth and Renewal](#) provides overarching guidance for the strategic and operational management of the Queensland Government's building construction and maintenance projects and programs, and provides guidance on key risk management decisions, including in relation to procurement and contracts.

To ensure consistency, fairness and efficiency in the Queensland Government's dealings with industry and effective implementation of the Queensland Government's building related policies, the Building Policy Framework requires the use of [standard contracts](#) for the delivery of all Queensland Government building construction projects and maintenance programs. The [standard contracts](#) include terms that reflect legislative and policy requirements with which building construction and maintenance consultants and contractors must comply.

The Contract Fundamentals supports the successful delivery of Queensland Government building construction projects under the [standard contracts](#), by promoting consistency, fairness and efficiency in the contract management activities undertaken by Queensland Government departments.

The Contract Fundamentals provides an overview of:

- the roles and relationships which provide the foundation for the delivery of Queensland Government building construction projects
- the fundamental principles and concepts of key contractual provisions under the Queensland Government's standard [building consultancy](#) and [building construction](#) contracts

- expectations of good contract management in the context of delivering building construction projects for the Queensland Government.

The Contract Fundamentals does not:

- address the principles, concepts and contractual provisions specific to building maintenance contracts or supply of goods contracts, although many of the principles and concepts discussed in the Contract Fundamentals apply generally to good contract management of those contracts
- address the principles, concepts and provisions specific to the tender process or the evaluation of tenders
- provide a comprehensive “how to” manual for contract management or address every contractual requirement
- provide a substitute for role-specific training and ongoing learning and development
- form part of any contract for the delivery of a Queensland Government building construction project or maintenance program.

USE AND GLOSSARY

The principles, concepts and contractual provisions discussed in the Contract Fundamentals have general relevance to the Queensland Government's standard [building consultancy](#) and [building construction](#) contracts, but their application will be contract and project specific, having regard to all the documents which form part of the contract for the project.

The Contract Fundamentals should therefore be read in conjunction with the respective [standard contract](#) and other specific guidance material, including the [Guide to Collaborative Contracting](#), which supports the successful delivery of Queensland Government building construction projects under the two stage building construction contracts.

Examples are provided in the Contract Fundamentals, where appropriate, to illustrate the application of a concept or principle. Examples are not exhaustive and do not limit or narrow the application of the concept or principle in any way.

While every effort has been made to ensure the accuracy, completeness and alignment of the Contract Fundamentals with the Queensland Government's standard [building consultancy](#) and [building construction](#) contracts, the Contract Fundamentals must not be relied upon by any party and no claim shall arise from it.

The Contract Fundamentals will be updated periodically to maintain its currency and relevance.

GLOSSARY OF TERMS AND ACRONYMS

The Contract Fundamentals discusses terms that are defined in the [standard contracts](#). The definitions given to such terms in the relevant [standard contract](#) apply to the Contract Fundamentals unless the term has a specific meaning given to it for the purposes of the Contract Fundamentals, in which case the specific meaning applies. Terms given a specific meaning for the purpose of the Contract Fundamentals are generally (but not always) capitalised for ease of recognition.

The following words or phrases used in the Contract Fundamentals, in either their singular or plural form, have the meaning given to them as follows:

- **Clerk of Works** means a person appointed under a [Standard Building Construction Contract](#) to perform the role of Clerk of Works, who is typically responsible for observing, recording and reporting on the work under the Contract.
- **Client Agency** means the department that commissions the project the subject of a Contract, who may deliver the project by direct engagement with industry (by entering into Contracts) or by engaging with a Delivery Department to deliver the project on its behalf.

- **Client Agreement** means the arrangement between the Client Agency and a Delivery Department engaged to provide services for the delivery of the project on the Client Agency's behalf.
- **Construction Manager** means the person (typically QBuild) appointed to scope, sequence, procure and coordinate packages of work to deliver a project using a construction management procurement strategy.
- **Consultant** means the contracted entity engaged under a [Standard Building Consultancy Contract](#) by the Principal to provide services in relation to the delivery of the project (e.g. architects, engineers, quantity surveyors, programmers).
- **Contract** means a contract which has been or may be entered into between the Principal and a Consultant or Contractor.
- **Contract Manager** means the person appointed to administer the Contract and refers to (as the context requires) the superintendent, principal's representative, superintendent's representative, site representative and/or the client's representative, as those terms are defined in the [Standard Contracts](#).
- **Contractor** means the contracted entity responsible for the construction of the project and who may also be responsible for the design and documentation of the project, and refers to (as the context requires) the contractor and/or managing contractor, as those terms are defined in the [Standard Building Construction Contracts](#).
- **Delivery Department** means the department engaged under a Client Agreement with a Client Agency to provide services, which may include project management, procurement, contract management and construction management services, for the delivery of the project on the Client Agency's behalf.
- **Principal** means the contracting entity and refers to (as the context requires) the principal, client and/or owner, as those terms are defined in the [Standard Contracts](#).
- **Project Manager** means the person who has overall day to day responsibility for the delivery of the project.
- **Project Team** means the Principal's team responsible for delivering the project the subject of a Contract, including the executive officer responsible for the project, the Project Manager and support staff, but excluding the Contract Manager when performing a certification role.
- **Standard Contracts** means the Queensland Government's standard [building consultancy](#) and [building construction](#) contracts published on [ForGov](#), in accordance with requirement 3 of the Building Policy Framework. Where information refers only to either building consultancy Contracts or building construction Contracts, the following terms are used:
 - **Standard Building Consultancy Contracts** means the building consultancy contracts published on [ForGov](#)
 - **Standard Building Construction Contracts** means the building construction contracts published on [ForGov](#).
- **Security** means both security in the form of an unconditional undertaking and security in the form of retention moneys, unless a particular form of security is referred to.
- **subcontractor** means another consultant or contractor engaged by the Principal's Consultant or Contractor to perform part of the services or work under the Contract.
- **tender** means an offer or a tender, as those terms are defined in the [Standard Contracts](#).
- **tenderer** means an offeror or a tenderer, as those terms are defined in the [Standard Contracts](#).

For more information in relation to the nature of client agreements, and the roles defined above, refer to the [Roles and Relationships](#) section.

The following abbreviations or acronyms used in the Contract Fundamentals have the meaning given to them as follows:

- **BIF Act** means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld)
- **Building Policy Framework** means the [Queensland Government Building Policy Framework – Growth and Renewal](#)
- **QBCC Act** means the *Queensland Building Construction Commission Act 1991* (Qld).

ROLES AND RELATIONSHIPS

The successful delivery of a Queensland Government building construction project, no matter the size or complexity, involves numerous parties and participants with different roles and responsibilities in relation to the project.

The relationship between different parties (e.g. the Principal and a Consultant or Contractor) is typically established under contract, using the [Standard Contracts](#).

However, the relationship between participants within the Queensland Government (e.g. between departments) is typically established by arrangements that define the roles, responsibilities and expectations of the departments in delivering shared objectives. Typically, these arrangements are not contractual in nature and may be generally referred to as Client Agreements.

This section sets out the nature of Client Agreements and [Standard Contracts](#), and the key roles involved in the delivery of projects under the [Standard Contracts](#).

Departments should also refer to their delegation policies when appointing officers to key roles, to ensure the appointed officers have the delegation to perform the obligations of the role.

CLIENT AGREEMENTS

Where a department (the Client Agency) has determined the need for a Queensland Government building construction project, and has obtained the necessary funding and approvals for its commencement, the Client Agency may:

- engage directly (by entering into Contracts) with Consultants and Contractors to deliver the project itself; or
- enter into a Client Agreement with a Delivery Department to provide services, which may include project management, procurement, contract management and construction management services, for the delivery of the project on the Client Agency's behalf.

When Client Agencies are deciding how to deliver a project, it is important to appreciate that, for Queensland Government departments, the contracting entity is the State of Queensland (through a nominated department). Therefore, as Queensland Government departments are all part of the contracting entity (being the State of Queensland), the relationship between departments is one that is internal to the contracting entity.

A Client Agreement should address the roles and responsibilities of the Client Agency and the Delivery Department, as those roles and responsibilities relate to the performance of obligations and exercising of rights under Contracts with Consultants and Contractors, and in respect of related legislation (e.g. the BIF Act). However, despite the existence of any Client Agreement, responsibilities in relation to funding for the project remain with the Client Agency.

The performance of obligations and the exercising of rights under a Contract or in related legislation must be undertaken by the person authorised to do so under the Contract. Therefore, it is particularly important that a Client Agreement addresses the roles of the [Principal](#) and [Contract Manager](#).

If the Client Agency retains the role of the Principal, the Client Agency will be responsible for ensuring that the rights and obligations of the Principal under the Contract and in legislation are properly exercised or performed by

an authorised person within the Client Agency who holds the required delegation to carry out the relevant act or make the relevant decision.

If, in the Client Agreement, the Client Agency requires the Delivery Department to perform the role of the Principal, the Delivery Department will be responsible for ensuring that the rights and obligations of the Principal under the Contract, and in related legislation, are properly exercised or performed by an authorised person within the Delivery Department who holds the required delegation to carry out the relevant act or make the relevant decision.

For example, if a Client Agency retains the role of Principal and a Consultant or Contractor makes an adjudication application under the BIF Act, the Client Agency will be responsible for preparing and issuing the adjudication response within the time required by the BIF Act, even if the role of Contract Manager is being performed by the Delivery Department. If the Delivery Department is responsible for performing the role of the Principal, it will be the Delivery Department's responsibility to deal with the adjudication application. For more information about payment obligations, adjudication and the BIF Act, refer to the [Payment](#) section.

It is important that, where a Delivery Department is providing services to a Client Agency for the delivery of a building construction project, the governance arrangements within the Client Agreement support, and do not impede, the proper performance of the obligations and duties of both the Principal (where applicable) and the Contract Manager under the Contract and in related legislation. This includes:

- ensuring that, where the Contract Manager has a certification role under the Contract, the Contract Manager is empowered to properly perform that certification role without interference from the Client Agency
- requiring that all directions given to a Consultant or Contractor or actions performed under the Contract are given or performed by the person authorised to do so under the Contract (i.e. the Contract Manager or authorised representative of the Principal)
- ensuring the person authorised to give directions or make decisions under the Contract (i.e. the Contract Manager or authorised representative of the Principal) is similarly authorised to do so under the Client Agreement.

For example, where the Contract Manager has a certification role under the Contract, the Contract Manager should not be required to obtain the Client Agency's approval prior to giving the certification. Governance arrangements, including the use of funding allocated as project contingency, should be structured in a way that facilitates the proper and unimpeded performance of the Contract Manager's certification role.

STANDARD CONTRACTS

[Standard Contracts](#) are available for a Client Agency, or a Delivery Department working under a Client Agreement, to engage Consultants and Contractors for the delivery of a building construction project. The use of [Standard Contracts](#) supports consistency, fairness and efficiency in the Queensland Government's dealings with industry.

In simple terms, the [Standard Contract](#) templates set out the framework and "rules" that frame the rights and obligations of the parties for the performance of services or work relevant to the delivery of a building construction project. The use of [Standard Contracts](#) allows Consultants, Contractors, Contract Managers, Principals and their Project Teams to proceed with the confidence of knowing that the framework and "rules" are consistent for Queensland Government building construction projects, and they can develop their systems and expertise accordingly.

However, the [Standard Contract](#) templates cannot be used on their own. In addition to setting the framework and "rules", the contract documents must communicate the specific requirements for the project to the Consultant or Contractor. This is done through the project specific documentation and details which accompany the [Standard Contract](#) templates. Therefore, it is important that the project specific documentation is consistent with the framework and "rules" that are set out in the [Standard Contracts](#).

The [Standard Contracts](#) provide for the appointment of a Contract Manager, whose role is to administer the Contract and act as certifier in respect of certain aspects of the services or work under the Contract.

The [Standard Contracts](#) include provisions that deal with the following topics and concepts, which are discussed in detail throughout this document:

- [formation of contract](#)
- [notices](#)
- [insurance](#)
- [site](#)
- [brief, design and documentation obligations](#)
- [subcontracting](#)
- [quality](#)
- [defects](#)
- [time](#)
- [variations](#)
- [claims](#)
- [security and set off](#)
- [payment](#)
- [dispute resolution](#)
- [default and termination](#)

CLIENT AGENCY

The Client Agency is the department that will have determined the need for a Queensland Government building construction project to fulfil the service needs of its department and will have sought and received the necessary funding and approvals for the project to proceed. The Client Agency then becomes responsible for the delivery of the project and may procure and enter into Contracts with Consultants and Contractors to deliver the project, or may enter into a Client Agreement with a Delivery Department to procure and deliver the project on its behalf.

Where the Client Agency engages Consultants and Contractors directly as Principal under the Contracts, the Client Agency will be required to perform the obligations and exercise the rights of the Principal under those Contracts and in related legislation.

Alternatively, where the Client Agency has entered into a Client Agreement to have a Delivery Department be the Principal on its behalf, the Delivery Department will be required to perform the obligations and exercise the rights of the Principal. The Client Agency will nonetheless remain an important stakeholder in the delivery of the project and will be required to:

- provide timely directions and decisions to the Delivery Department in relation to the project to ensure that the Delivery Department can meet contractual and statutory timeframes
- ensure that there is sufficient project funding available to enable the Delivery Department to satisfy the obligations and exercise the rights of the Principal under the Contracts and in related legislation
- do all other things required of the Client Agency as set out in the Client Agreement.

PRINCIPAL

The Principal is the contracting entity who, for a Queensland Government building construction project, will typically be the State of Queensland through a nominated department, which may be the Client Agency or a Delivery Department working under a Client Agreement made with the Client Agency.

There are some rights and obligations under the [Standard Contracts](#) which can only be exercised or performed by the Principal. For example, under the [Standard Contracts](#):

- the Principal must ensure that there is, at all times, a Contract Manager properly appointed to fulfil the functions of the Contract Manager under the Contract
- the Principal (not the Contract Manager) may have recourse to Security, issue a notice to show cause or terminate the Contract.

It is important that the person who exercises those rights or performs those obligations holds a position that is appropriately authorised and delegated to act on behalf of the Principal.

The Principal also has obligations in relation to sending and receiving notices under the Contract, for more information on notices, refer to the [Notices](#) section.

There are also some functions under the [Standard Contracts](#) which can only be performed by the Contract Manager, acting as certifier (e.g. certifying claims for payment and practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management)). The Principal should ensure that the Contract Manager is able to perform those functions without interference by the Principal. Where communication does occur between the Principal and the Contract Manager (when acting as certifier) the Principal's communication should:

- be made in writing
- not direct the Contract Manager as to how to perform its functions
- acknowledge the Contract Manager's obligation to act in accordance with the Contract.

PROJECT MANAGER

The Project Manager is the person nominated by the Client Agency or, where there is a Delivery Department engaged to provide project management services for the project, the Delivery Department, to have overall day to day responsibility for the delivery of the project. The Project Manager's responsibilities will likely include management of the following aspects of the project:

- scope
- time
- cost
- quality
- resources, including necessary technical expertise
- communications
- stakeholders
- risks
- procurement
- overall coordination of the above aspects of the project.

The Project Manager's responsibilities continue throughout construction until the project is finally completed and involves ensuring that the delegate of the Principal fulfils the Principal's obligations under the Contract, including by ensuring that there is, at all times, a Contract Manager properly appointed to administer the Contract. Therefore, where the appointed Contract Manager becomes unable to fulfil the functions of the Contract Manager (e.g. due to illness, being on holidays or secondment), the Project Manager should ensure that the Principal promptly appoints a replacement and notifies the Consultant or Contractor in accordance with the Contract.

Project Managers must have the appropriate delegation to perform the role and must ensure their communication with Contract Managers does not compromise the Principal's obligation to ensure the Contract Manager's independence in relation to their certification role. For more information on the Principal's obligation to ensure the Contract Manager's independence in relation to their certification role, refer to the [Principal](#) section.

CONSTRUCTION MANAGER

A Construction Manager is required when a project is being delivered using a construction management procurement strategy. For Queensland Government building construction projects, the Construction Manager will typically be an officer of QBuild. For more information about construction management, refer to the [Choosing a procurement strategy for BCM projects and programs](#) webpage.

The Construction Manager will be responsible for matters such as:

- determining the scope of each package of work necessary to complete the project
- determining the sequencing and program for each package of work to achieve completion of the project
- procuring Contractors under trade Contracts for each package of work
- coordinating the work of trade Contractors
- managing work health and safety obligations of the Principal.

CONSULTANT

A Consultant (e.g. architect, engineer, quantity surveyor, programmer, building surveyor or other professional technical specialist) is a contracted entity who may typically be responsible for:

- producing the project specific documentation for the project, either in its entirety or for specific aspects of the project, which may be limited to production of a comprehensive project brief or include the full design and documentation for the project
- providing specialist technical advice
- inspecting, auditing, certifying or reporting upon aspects of the project.

Generally, Consultants are permitted to subcontract work to other specialist consultants.

CONTRACTOR

A Contractor is a contracted entity who is responsible for construction of the project, and may also be responsible for its design, documentation and certification, depending on the Contract.

Generally, Contractors are permitted to subcontract work to subcontractors (including consultants).

SUBCONTRACTOR

A subcontractor (including sub-consultant) is another consultant or contractor engaged by a Consultant or Contractor to perform part of the services or work under the Contract.

The subcontractor is engaged by the Consultant or Contractor under a contract to which the Principal is not a party. Therefore, neither the Principal nor the Contract Manager should direct a subcontractor about the services or work

under the Contract, as the performance of the subcontract is a matter between the Consultant or Contractor and their subcontractor.

Notwithstanding the engagement of a subcontractor by a Consultant or Contractor, the Consultant or Contractor remains responsible and liable for the whole of the services or work under the Contract.

For more information on subcontracting, refer to the [Subcontracting](#) section.

CONTRACT MANAGER

The [Standard Contracts](#) provide for a Contract Manager, who is the person appointed by the Principal under the Contract, to administer the Contract in accordance with its terms.

Typically, the Contract Manager plays a dual role in that:

- where required by the Contract, the Contract Manager must act as certifier, acting fairly, impartially and honestly (e.g. when valuing variations or extensions of time, and certifying payments and practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management)); but
- where acting as agent of the Principal, the Contract Manager must act in the interests of the Principal in accordance with the Contract (e.g. when directing variations).

The Contract Manager also has obligations in relation to sending and receiving notices under the Contract, for more information on notices, refer to the [Notices](#) section.

Under some of the [Standard Building Construction Contracts](#), the Contract Manager appointed by the Principal may in turn appoint one or more representatives to perform functions of the Contract Manager under the Contract (e.g. by appointing a superintendent's representative or site representative). The appointment of a superintendent's representative or site representative must be made in accordance with the Contract and must clearly identify the functions that have been delegated, which must not be delegated to more than one representative at the same time. The delegation of functions to a superintendent's representative or site representative does not preclude the Contract Manager appointed by the Principal from performing those functions under the Contract.

The Contract Manager plays an important role in administering the Contract. While not all [Standard Contracts](#) impose obligations on the parties to act collaboratively, the Contract Manager is nonetheless well-positioned to foster a collaborative working environment – for example, by:

- promoting open and honest communication,
- dealing with issues as they arise; and
- working diligently with the Consultant or Contractor to resolve them.

CLERK OF WORKS

Some of the [Standard Building Construction Contracts](#) contain provisions which allow for the appointment of a Clerk of Works. The services of a Clerk of Works may be beneficial:

- for projects where quality is of critical importance (e.g. where identifying issues early on is paramount to the successful delivery of the project)
- for large and/or complex projects
- where coordination with other activities is required (e.g. where work is in an occupied building)
- for projects which have specialist requirements (e.g. some projects may benefit from a Clerk of Works who has specific skill or expertise in a particular field, such as specialist services)
- where there is an increased need for inspections of the work under the Contract and record keeping as the work is being carried out.

A Clerk of Works is typically responsible for observing, recording and reporting that the work is being executed in accordance with the Contract or instructions issued by the Contract Manager. Typically, the powers given to a Clerk of Works under the Contract are limited and the Clerk of Works is not authorised to direct the Contractor.

CONTRACT FORMATION AND INTERPRETATION

Generally, a [Standard Contract](#) is entered into when the Principal accepts a tenderer's tender.

This section sets out the fundamental concepts and principles relevant to accepting a tender and entering into a Contract.

ACCEPTANCE OF TENDER

The [Standard Contracts](#) do not require the signing of the Contract by both parties (the Principal and the Consultant or Contractor) to form the Contract. The [Standard Contracts](#) provide for a Contract to be formed upon acceptance of a tender, which typically occurs by way of a letter of acceptance. This means that the documents upon which the Consultant or Contractor has tendered are the same documents that then make up the Contract. The tender documents therefore need to be completed to a suitable standard before tenders are called.

Under the construct only [Standard Building Construction Contracts](#), there is no requirement for the Contract Manager to issue "for construction" documentation to the Contractor upon accepting the Contractor's tender. The "for construction" documentation is the tender documentation upon which the Contractor tendered.

Things to be mindful of prior to accepting a tender include:

- confirming whether the tender is capable of acceptance (e.g. is acceptance within a reasonable time or has the tender been withdrawn)
- ensuring that there is certainty about important particulars (e.g. the contract price)
- confirming whether any departures/changes to the Contract or counter-conditions included by the tenderer have been properly withdrawn or actioned ([Contract Services](#) should be consulted where any proposed departures or changes to the [Standard Contracts](#) are being considered – accepting departures or counter-conditions may result in the Contract not being a [Standard Contract](#), and the requirements of policy requirement 3 of the [Building Policy Framework](#) apply)
- ensuring any project specific qualifications contained in the tender (unrelated to the Contract conditions) are properly addressed by the Project Manager supported by the Project Team
- ensuring that all necessary approvals are in place to enable commencement of the project
- ensuring that access to or possession of the site can be given at or by the time provided in the Contract
- ensuring that a tender is not accidentally or unintentionally accepted (e.g. by giving a tenderer the "heads up" that it "has won the tender" and permitting the tenderer to get an "early start" on delivering the project)
- ensuring that the appropriately authorised delegate, who has authority to enter into the Contract on behalf of the Principal, accepts the tender and awards the Contract
- ensuring that new terms or conditions are not introduced in the letter of acceptance (e.g. by clarifying aspects of the tender or project requirements in the letter of acceptance)
- ensuring that the letter of acceptance is issued on the date that appears on the letter to ensure consistency with the terms of the [Standard Contracts](#).

Upon entering into a Contract, it is expected that the Consultant or Contractor and the Principal will fulfil their obligations and complete the Contract, and the Principal should therefore only accept a tender where there is a genuine intention to proceed with the Contract that is subsequently formed.

FORMAL INSTRUMENT OF AGREEMENT

A Formal Instrument of Agreement ("FIA") is a physical legal document which evidences the agreement between the parties and confirms the Contract, after the Contract has been awarded by issuing the letter of acceptance. It is typically only required for larger and more complex projects.

If an FIA is required, the requirement for and the form of the FIA must be stipulated in the Contract. [Standard Contracts](#) suitable for major or complex projects stipulate that an FIA is required and prescribe the form in a schedule to the Contract. For those [Standard Contracts](#) that can be used for a broad range of projects, the requirement for an FIA must be stipulated in the Annexure to the Conditions of Contract by the Project Manager at the time of tender, and the form of the FIA is prescribed in a schedule to the Contract. An FIA is not required under [Standard Contracts](#) that are suitable for use on simple, minor or medium scale projects.

Where an FIA is required under the Contract, two identical copies of the FIA, inclusive of all documents comprising the Contract, should be compiled by the Project Manager supported by the Project Team promptly after the issuance of the letter of acceptance, and the Contract Manager should then follow the provisions of the Contract in arranging for execution of the FIA by each of the parties. The FIA provides the parties with certainty as to the documents which form the Contract and is valuable for the proper administration of the Contract. The FIA should be prepared and executed as promptly as possible following Contract award.

Further information on FIAs, including when they are required and how to prepare them, can be found in the [Guide Note: Formal Instrument of Agreement](#).

DEED OF GUARANTEE AND INDEMNITY

In some of the [Standard Building Construction Contracts](#), where the Contractor is a related or subsidiary corporation, the Principal may request the Contractor to provide an executed and enforceable Deed of Guarantee and Indemnity by the entity to which the Contractor is related to or a subsidiary corporation of (e.g. a parent company).

A Deed of Guarantee and Indemnity is, in simple terms, a promise from the entity to which the Contractor is related to or a subsidiary corporation of, to fulfil any obligation (including any obligation to indemnify) or indebtedness of the Contractor if the Contractor defaults under the Contract.

A Deed of Guarantee and Indemnity should not be requested under a Contract without prior consultation with the office of the Prequalification System ("PQC").

Where required, a Deed of Guarantee and Indemnity would normally be requested before work under the Contract is commenced, but a need may arise during the term of the Contract. If concerns about a Contractor's financial capacity arise during the term of the Contract, the Principal must consult with PQC without delay.

AMBIGUITIES AND DISCREPANCIES

An ambiguity in the contract documents occurs where a requirement can reasonably be interpreted in more than one way.

A discrepancy or inconsistency in the contract documents occurs when a requirement in one part of the contract documents differs from a requirement in another part of the contract documents and such discrepancy cannot be overcome by an order of precedence that stipulates which requirement is to apply.

Under the [Standard Building Construction Contracts](#), ambiguities or discrepancies are often brought to the attention of the Contract Manager through a "request for information" or "RFI" process. However, RFIs may also be made to seek further information or clarification where no true ambiguity or discrepancy exists. Where a genuine ambiguity or discrepancy has been identified, it should be dealt with promptly and in accordance with the Contract.

Typically, under the [Standard Contracts](#):

- the documents which form the Contract are to be taken as mutually explanatory of one another and should be read as a whole – for example, under a fully documented construct only Contract, the required concrete strength may be set out on the slab drawings or in the concrete specification, but it does not need to be set out in both, and its appearance on the drawings but not in the specification does not make the drawings and specification inconsistent with one another

- where there is an inconsistency between a broad requirement and a specific requirement, the specific requirement will generally apply – for example, where the ceiling height is generally described as being 2400mm throughout the project, but there is a specific detail showing a raked ceiling in the entry foyer, the specific requirement is likely to apply
- there are provisions which state that no rule of interpretation (e.g. the *contra proferentem* rule) applies to the disadvantage of a party on the basis that they provided the relevant document. For example, if there is an ambiguity in the Principal's contract documents, it will not be resolved against or to the disadvantage of the Principal simply because the Principal produced the contract documents.

CONSULTANT'S AND CONTRACTOR'S GENERAL OBLIGATIONS

This section sets out the fundamental concepts and principles relevant to the general obligations of a Consultant once engaged under a [Standard Building Consultancy Contract](#), or a Contractor once engaged under a [Standard Building Construction Contract](#).

Obligations in relation to preparation of the brief, design and documentation for a project differs depending on the procurement strategy and form of Contract selected for the delivery of the project. More information on the different procurement strategies and [Standard Contracts](#) can be found on the [BCM contract selection, management and advice](#) webpage.

In simple terms:

- For **fully designed and documented, construct only** [Standard Building Construction Contracts](#) (whether for projects to be constructed by a single Contractor or where multiple trade Contractors are engaged under a construction management delivery model), the project brief, bill of quantities (where required) and design and documentation will typically be prepared (whether in its entirety or in relation to specific aspects) by one or more Consultants engaged by the Principal under a [Standard Building Consultancy Contract](#).

When engaged to develop any such project brief, design or documentation, one or more Consultants will:

- develop the project brief for the project
- design the project in accordance with the approved project brief
- document the project in accordance with the approved design
- where required, prepare the bill of quantities in accordance with the specification and documentation of the approved design.

The Contractor will:

- construct the project in accordance with the documentation provided in the Principal's tender documents (i.e. that developed by the Consultant/s)
- provide as-built documentation which records the works as constructed.
- For **design and construct** [Standard Building Construction Contracts](#) (whether single stage or two stage), design and documentation will be prepared by the Contractor in accordance with a project brief that has typically been prepared by one or more Consultants engaged by the Principal under a [Standard Building Consultancy Contract](#).

One or more Consultants will:

- develop the project brief for the project (which may include or be accompanied by a preliminary design).

The Contractor will:

- engage consultants to design the project in accordance with the project brief
- engage consultants to document the project in accordance with the design

- construct the project in accordance with the documentation
- provide as-built documentation which records the works as constructed.

CONSULTANT'S OBLIGATIONS

This section sets out the fundamental concepts and principles relevant to the obligations of a Consultant, once engaged under a [Standard Building Consultancy Contract](#).

Notwithstanding that a Consultant may have been engaged to prepare the contract documents, the Project Manager should be satisfied that the contract documents prepared by the Consultant have been fully completed, co-ordinated and are suitably aligned with the selected procurement strategy and form of Contract for the delivery of the project, prior to commencing the tender process for engagement of a Contractor.

Similarly, where a Consultant (such as a programmer, engineer, quantity surveyor or other technical specialist) has been engaged to provide specialist technical advice other than the production of the design and documentation for the project (e.g. a geotechnical report about the ground conditions of the site), the Project Manager should be satisfied that the information provided is reliable (i.e. sound and trustworthy) with regard to the scope and purpose for which the information was created, prior to using such information for the production of the design or documentation, or for any subsequent tender process.

CONSULTANT'S OBLIGATIONS UNDER FULLY DESIGNED AND DOCUMENTED, CONSTRUCT ONLY AND CONSTRUCTION MANAGEMENT PROCUREMENT

Where one or more Consultants have been engaged to provide services to fully design and document the works for a project to be constructed by a Contractor under a fully designed and documented, construct only [Standard Building Construction Contract](#), the Consultant will generally be required to:

- develop (or confirm) the project brief for the project
- design the project in accordance with the approved project brief
- produce the documentation (detailed drawings, specifications and, where required, a bill of quantities) in accordance with the approved design.

In undertaking the above activities, the Consultant is required to adhere to the standards required by the Contract, including the terms of reference, to produce documentation that:

- is complete and fully co-ordinated
- takes into account the findings from all required investigations and due diligence activities
- is suitable, appropriate and adequate for the purposes of constructing the works.

It is important to ensure that the design and documentation of the works is sufficiently complete to fully describe the requirements for the construction of the works, particularly if certain aspects of the works are to be completed in a certain way. For example, if there is a framing connection that is visible upon completion of the works and there is a desire for it to be finished in a visually appealing way, the Consultant should set out the requirements of how the connection is to be finished in the contract documentation upon which the Contractor will tender.

Noting that the [Standard Building Construction Contracts](#) provide for a Contract to be formed upon acceptance of a tender, the documentation upon which Contractors tender (inclusive of any addenda) will be the same documentation upon which the Contract is formed. Therefore, it is not necessary or ideal for a Consultant to prepare "for tender" documentation and then "for construction" documentation, because any changes between the two will need to be identified and dealt with under the building construction Contract.

Fully designed and documented, construct only [Standard Building Construction Contracts](#) include those contracts used to engage:

- a Contractor for the delivery of an entire project (e.g. the construction of a police station or the upgrade of air conditioning)

- Contractors under a construction management procurement strategy, for the delivery of specific packages of work (e.g. individual trades such as carpentry, electrical works, roofing, etc) which together comprise the project.

Unless the project is being delivered by construction management, the Contractor will be responsible for constructing the whole of the works for the project and the Consultant will need to prepare documentation for the works in their entirety. The Contractor may engage subcontractors to perform parts of the work, and will be responsible for determining the packaging of the subcontracted work and instructing the subcontractor accordingly. Therefore, the documentation produced by the Consultant should be instructive to the Contractor only. For example, matters relevant to a subcontractor's preliminaries and the extent of a subcontractor's scope of work are matters for the Contractor to determine and address in their subcontract documentation.

Where the project is being delivered by construction management (i.e. where QBuild is providing construction management services to a Client Agency), the Principal will be required to enter into numerous individual trade-specific Contracts for the completion of trade-specific packages of work which together comprise the project. The Consultant will therefore need to produce trade contract documents that are fully coordinated, both for the work of the trade and for delivery of the project more broadly. Unlike the documentation required where a single Contractor delivers the project:

- the Consultant will need to know how the Construction Manager (QBuild) intends to package the works which together comprise the project; and
- the Consultant will need to consider and document the demarcation of responsibilities under each trade Contract, ensuring that work is neither duplicated nor missed.

For example, there may be a single trade Contract for all of formwork, reinforcement and concrete placement, or there may be separate Contracts for components of these works, and the demarcation of responsibilities will need to be carefully considered and clearly articulated in the tender documents.

CONSULTANT'S OBLIGATIONS UNDER DESIGN AND CONSTRUCT PROCUREMENT

Where one or more Consultants have been engaged to provide services for a project to be designed and constructed by a Contractor under a design and construct [Standard Building Construction Contract](#) (whether single stage or two stage), the Consultant will generally be required to:

- develop and document the project brief for the project, which may incorporate or be accompanied by a preliminary design.

The Consultant is required to adhere to the standards required by the Contract, including the terms of reference, to produce a project brief that:

- fully describes the requirements for the project, including the project's purpose, performance, scope, quality, functional and technical requirements
- includes information that will inform the design, documentation or construction of the project
- is suitable, appropriate and adequate for the purposes of designing and constructing the works.

The project brief may incorporate or be accompanied by a preliminary design. However, a partially completed or "point in time" design, even if accompanied with partially completed specifications, is not sufficient on its own to articulate the Principal's project requirements under the design and construct [Standard Building Construction Contracts](#). This is because the requirements for the parts of the project that have been designed will have been adequately (or perhaps too prescriptively) articulated to the Contractor, while the requirements for the undesigned portion will not have been adequately described.

Therefore, where a Consultant has been engaged to prepare tender documentation for a project that will be delivered under a design and construct [Standard Building Construction Contract](#), the Consultant should be instructed to clearly articulate the Principal's requirements for the entire project, by way of a project brief which sets out the outputs or performance requirements for all aspects of the project. The project brief may be supported by preliminary design work to the extent that it assists in informing the Contractor of the Principal's project requirements.

CONSULTANT'S OBLIGATIONS UNDER A CONTRACT FOR SPECIALIST TECHNICAL SERVICES

Where a Consultant (e.g. a programmer, engineer, quantity surveyor or other technical specialist) has been engaged to provide specialist technical advice or services other than the production of the design and documentation for the project, the Consultant is required to provide such services in accordance with the terms of reference provided by the Principal, which details the Principal's requirements in respect of the services (including the purpose for which the services are required).

For example, the Principal often engages a quantity surveyor and programmer to assist with monitoring, assessing and deciding upon cost and time related matters affecting a construction project during its delivery.

In providing specialist technical consultancy services, the Consultant will be required to adhere to the standards prescribed in the Contract, including the terms of reference, and ensure that the services provided (including any information produced) are:

- reliable with regard to the purpose for which the Principal has requested the services
- sound and trustworthy to the extent of the stated scope and to achieve the stated purpose.

CONTRACTOR'S OBLIGATIONS

This section sets out the fundamental concepts and principles relevant to the obligations of a Contractor, once engaged under a Standard Building Construction Contract.

CONTRACTOR'S OBLIGATIONS UNDER FULLY DESIGNED AND DOCUMENTED, CONSTRUCT ONLY AND CONSTRUCTION MANAGEMENT

Fully designed and documented, construct only Contracts include those contracts used to engage a Contractor for the delivery of an entire project (e.g. the construction of a police station or the upgrade of air conditioning), as well as those used to engage Contractors under a construction management procurement strategy, for the delivery of specific packages of work (e.g. individual trades such as carpentry, electrical works, roofing, etc) which together comprise the project.

For fully designed and documented, construct only Contracts and trade Contracts:

- the Principal is required to prepare and provide to the Contractor the design and documentation of the works at the time of tendering the project
- the Contractor is then responsible for:
 - constructing the works in accordance with the design and documentation provided in the Principal's tender documents
 - providing as-built documentation which records the works as constructed.

The design and documentation provided by the Principal may not contain every detail necessary to complete the work under the Contract and the Contractor will typically be required to complete any necessary minor or incidental design and documentation work when the work under the Contract is being executed (for example, there may be some design necessary for temporary works).

The Contractor is responsible for satisfying itself at the time of tender of the completeness of the design and documentation of the works, determining the extent to which any minor or incidental design and/or documentation work will be required, and making appropriate allowances for this work in its tender. The contract sum is deemed to allow for any minor or incidental design or documentation/detailing required to enable the work under the Contract to be completed, and there is typically no entitlement to additional payment for the Contractor simply because it is required to carry out this work.

While there is a requirement for the Contractor to complete any minor or incidental design and documentation work necessary (e.g. temporary works) under fully designed and documented, construct only Contracts, these Contracts are not appropriate for use where the Contractor is required to carry out anything beyond such minor or incidental design.

In constructing the project, the Contractor is required to adhere to the standards required by the Contract to ensure that the work under the Contract is:

- executed according to the specified standard of workmanship and in accordance with the requirements of the Contract
- completed by the date for practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management), as adjusted under the Contract.

CONTRACTOR'S OBLIGATIONS UNDER SINGLE STAGE DESIGN AND CONSTRUCT

For single stage design and construct Contracts the Contractor is responsible for:

- the design, documentation and construction of the works in accordance with the Principal's requirements for the project provided in the tender documents
- providing as-built documentation which records the works as constructed.

Generally, the Contractor engages consultants to complete the design and documentation work on its behalf (under subcontracts) but remains liable to the Principal for:

- the design, documentation and construction of the works in accordance with the Principal's requirements for the project;
- the suitability of the works for its stated purpose; and
- for the statutory compliance of the works.

A Contractor should not be engaged under a single stage design and construct Contract where the design and documentation is substantially complete, and the Contractor would only be required to complete the remaining (small degree of) documentation work. In such circumstances, the design and documentation should be fully completed and co-ordinated by the Consultant, in accordance with the requirements for preparing tender documentation for a construct only Contract.

If there is a preliminary design included in the Principal's requirements for the project, the Contractor also assumes responsibility for that design and is required to warrant its suitability, appropriateness and adequacy for the purpose stated in the Principal's project requirements.

In constructing the project, the Contractor is required to adhere to the standards required by the Contract to ensure that the work under the Contract is:

- executed according to the specified standard of workmanship and in accordance with the requirements of the Contract
- completed by the date for practical completion, as adjusted under the Contract.

CONTRACTOR'S OBLIGATIONS UNDER TWO STAGE DESIGN AND CONSTRUCT

For two stage design and construct Contracts:

- during stage one, the Contractor is required to work collaboratively with the Principal to produce a Guaranteed Construction Sum ("GCS") Offer or Stage Two Offer; and
- if the offer is accepted and stage two is incorporated into the Contract, the Contractor is required to complete the design work, documentation work and construction work to deliver the project.

During stage one, the Contractor is required to work to optimise outcomes in relation to the Principal's requirements and project constraints (including time, cost, scope and quality) and undertakes design work to produce a GCS Offer or Stage Two Offer inclusive of a revised project brief. As part of this, the Contractor may also undertake documentation work and some construction work (as early works).

If stage two of the Contract proceeds, the Contractor is responsible for managing completion of the remaining design work, documentation work and construction work and warrants that the design is in accordance with, and meets the requirements of, the revised project brief and is suitable, appropriate and adequate for the purpose stated in the revised project brief.

In managing the construction of the project, the Contractor is required to ensure that the standards required by the Contract are adhered to so that the work under the Contract is:

- executed according to the specified standard of workmanship and in accordance with the requirements of the Contract
- completed by the date for practical completion, as adjusted under the Contract.

In the case of the Two Stage Managing Contractor Contract, there are constraints on the Contractor in relation to the performance of construction work, which results in most (if not all) of the construction work being undertaken by subcontractors.

Further information is available in the [Guide to Collaborative Contracting](#), which supports the successful delivery of Queensland Government building construction projects under the two stage [Standard Building Construction Contracts](#).

AS BUILT DOCUMENTATION

Typically, the contract documents will require the Contractor to produce documentation which records the dimensions and details of the final constructed state of the project.

As built documentation is an important project record for the purposes of certification, resolution of contractual issues, maintenance during the life of the asset and for any future works. It is therefore important that the Contract Manager ensures that accurate and comprehensive as built documentation is produced by the Contractor and provided when required by the Contract.

NOTICES

A notice is a general term used in the [Standard Contracts](#) to describe (depending on the terms of the specific Contract) a broad category of written communication issued by one party or the Contract Manager to the other party and/or the Contract Manager.

Many [Standard Contracts](#) set out requirements which the parties must comply with or account for when issuing notices under the Contract. Notice requirements may also be included in or affected by legislation (e.g. the BIF Act or QBCC Act). For specific information about payment claims and payment schedules, refer to the [Payment](#) section.

It is important that any notice requirements stipulated in the Contract are complied with or accounted for. The Contract may stipulate:

- the form and content of the notice – there may be specific wording which must be included in the notice or specific items which must be addressed
- by whom the notice must be issued – the party or person issuing the notice should be the party or person properly authorised to do so, both under the Contract and by delegation
- the address for delivery – the address should be the correct, current address for the recipient, as provided for under the Contract
- the method of delivery – the method used to deliver or serve the notice should be one of the methods prescribed by the Contract, and if a specific method has not been prescribed, there should be evidence of the notice having been received by the intended recipient
- the time of receipt or effect of the notice – a notice may not take effect immediately, particularly where the Contract stipulates a period before it is deemed to have been received (even if it is received earlier), and this may vary depending upon the method of delivery
- the time by which the recipient of the notice is required to act or respond – any deemed delivery time should be accounted for, in addition to any prescribed period before which an action or response can be required of the recipient (e.g. where a notice is deemed to be received five days after it is sent and the recipient is required to respond five days after receiving the notice, the date for the recipient's response will be ten days after the notice is sent).

Often, there are specific (and sometimes more onerous) requirements which apply to notices issued under particular clauses (e.g. show cause or termination notices typically have their own specific requirements and often include a requirement for delivery by hand in addition to other methods of service).

Contract Managers should check that notices received from Consultants or Contractors comply with the relevant notice provisions under the Contract. However, a notice received should not be ignored, regardless of whether it is considered non-compliant or incorrectly served.

To minimise the risk of missed or incorrectly served notices, Project Teams should implement processes to ensure that:

- any changes to the addresses or contact details of the parties or the Contract Manager are promptly communicated to each other, in accordance with the provisions of the Contract
- addresses and contact locations are actively monitored for delivery of notices, and any notices received are promptly actioned or on-forwarded for action, as appropriate.

INSURANCE

Before a Consultant or Contractor commences services or work under the Contract, they are required to hold appropriate insurances in accordance with the terms of the Contract.

However, there are remedies included in the [Standard Contracts](#), appropriate to the circumstances, which should be exhausted prior to relying upon insurances under the Contract to recover associated loss. Insurance under the Contract is not intended to circumvent the contractual remedies. The types of remedies provided for under the [Standard Contracts](#) include:

- performance based remedies (e.g. requiring the Contractor to rectify, make good or remedy work)
- damages based remedies (e.g. monetary damages including recourse to Security.)

For more information on defect rectification and recourse to Security, refer to the [Defect Rectification](#) and [Security and Set Off](#) sections.

Below is a summary of the common insurances a Consultant or Contractor may be required to hold under the [Standard Contracts](#). The insurances required vary depending on the particular [Standard Contract](#) and associated risks and it is important that the Contract Manager ensures that the Consultant or Contractor holds the necessary insurances in accordance with the Contract, including in the terms and at the times required by the Contract.

INSURANCE OF THE WORK UNDER THE CONTRACT

Also referred to as contract works insurance or construction all risk insurance, insurance of the work under the Contract provides cover for risk of loss or damage to the construction work under the Contract.

Contract works insurance is required to be arranged by the party responsible for doing so in the Contract. Generally, the Contract will require that the Principal is stated as an insured party on the Contractor's contract works insurance policy. It is important to ensure that the Principal is identified as being insured, and that the policy does not simply note the Principal's involvement or interest in the project. This is to ensure that the Principal will receive the benefit of cover under the Contractor's policy.

It is important to receive evidence of the Contractor's insurance (at the time required by the Contract) and confirm that the insurance is in accordance with the requirements set out in the Contract (e.g. that it covers the things and parties which the Contract requires it to cover) to ensure the Principal is properly protected.

PUBLIC LIABILITY INSURANCE

Public liability insurance covers the Consultant's or Contractor's liability against the financial risks of being found liable for a third party's death or injury, loss or damage to property or economic loss resulting from their negligence. This type of insurance is required under all [Standard Contracts](#).

Public liability insurance is required to be arranged by the party responsible for doing so in the Contract. Generally, the Contract will require that the Principal is stated as an insured party on the Consultant's or Contractor's public liability insurance policy. It is important to ensure that the Principal is identified as being insured, and that the policy

does not simply note the Principal's involvement or interest in the project. This is to ensure that the Principal will receive the benefit of cover under the Consultant's or Contractor's policy.

It is important to receive evidence of the Consultant's or Contractor's insurance (at the time required by the Contract) and confirm that the insurance is in accordance with the terms set out in the Contract (e.g. that it covers the things and parties which the Contract requires it to cover) to ensure that the Principal is properly protected.

INSURANCE OF EMPLOYEES

Insurance of Employees (such as WorkCover) or workers' compensation insurance provides cover to the Consultant or Contractor in respect of its liability as an employer for death of or injury to an employee and is required under all [Standard Contracts](#).

PROFESSIONAL INDEMNITY INSURANCE

Professional indemnity insurance provides cover in relation to loss or damage caused by a person or persons due to breach of contract or breach of their duty to act in a professional capacity (e.g. in the provision of professional advice or services).

Professional indemnity insurance is always required under [Standard Contracts](#) that:

- provide for engagement of a Consultant to provide services; or
- require a Contractor to carry out design and/or documentation work and/or rely on the Contractor to provide a professional consultancy service (or engage a consultant to perform this service on the Contractor's behalf).

Professional indemnity insurance must be maintained after completion of the services or work under the Contract, for the period specified in the Contract (which is in accordance with limitations prescribed by legislation). This is required to ensure that the Consultant or Contractor remains covered for any claims for loss or damage resulting from their work discovered or occurring after completion of the Contract.

INDUSTRIAL SPECIAL RISKS INSURANCE

Industrial special risks insurance provides cover for damage to and consequential loss in respect of physical assets such buildings, plant and machinery.

Industrial special risks insurance is required under the [Standard Contract](#) for use on modular building projects ("Modular Contract") as the modules and modular buildings are high-value physical assets that are fully prefabricated off-site, and may be stored off-site before being transported to a construction site and fixed in place. Under such contracts, the Principal's risk of loss or damage to the whole of the works is increased as a result of the nature of the work performed and the method of that performance.

Generally, the Contract requires that the Principal is stated as an insured party on the Contractor's industrial special risks insurance policy. It is important to ensure that the Principal is identified as being insured, and that the policy does not simply note the Principal's involvement or interest in the project. This is to ensure that the Principal will receive the benefit of cover under the Contractor's policy.

It is important to receive evidence of the Contractor's insurance (at the time required by the Contract) and confirm that the insurance is in accordance with the terms set out in the Contract (e.g. that it covers the things and parties which the Contract requires it to cover) to ensure the Principal is properly protected.

INTELLECTUAL PROPERTY RIGHTS AND MORAL RIGHTS IN DESIGN

Design, being a creation of the mind, is intellectual property. Intellectual property rights protect intellectual property, typically through copyright, trademarks and patents, granting exclusive rights to the owner of the intellectual property (e.g. the owner of the design or method of working). To lawfully use intellectual property rights, ownership of, or a licence to, the intellectual property rights is required.

For the construct only [Standard Building Construction Contracts](#), where design and construction documentation has been completed and is typically owned by the Principal, the Principal gives the Contractor an irrevocable, royalty-free, worldwide, perpetual and transferable licence to use the design, materials and documents provided by the Principal, but only for the limited purpose of construction of the works.

For the design and construct [Standard Building Construction Contracts](#) and the [Standard Building Consultancy Contracts](#), where the Contractor or Consultant is required to carry out design and/or documentation or provide services, the [Standard Contracts](#) set out who is to own the intellectual property rights of the material upon its creation, which is typically the Principal.

Where the Principal is to own the intellectual property rights, but the Contractor or Consultant does not own the intellectual property rights themselves (and therefore cannot give ownership over to the Principal), the Contractor or Consultant must obtain an irrevocable, royalty-free, worldwide, perpetual and transferable licence for the Principal to use those intellectual property rights. This ensures that the Principal still obtains the benefit of, and can use, the intellectual property rights, in a lawful manner.

Parties should refer to the Contract to determine the obligations in respect of design ownership.

MORAL RIGHTS

Moral rights are personal rights which an individual holds in respect of their created work. Moral rights include the right of attribution (to be credited as the author of the work), the right against false attribution (to prevent others from being incorrectly identified as the author of the work), and the right of integrity (to object to derogatory treatment of the work that could harm the creator's reputation). Moral rights can only be held by individuals, and not corporations or other entities.

Moral rights are especially relevant for design professionals and exist in addition to any other rights in relation to the work that the creator or anyone else may have under law (including matters such as copyright or other applicable intellectual property rights).

Moral rights exist independently of copyright (and other intellectual property rights) and cannot be assigned. As such, moral rights are not automatically waived if copyright is assigned to another party. This means that, unless there is a valid waiver in place, moral rights continue to apply even if copyright has been transferred or assigned. If moral rights are breached, the creator may have remedies available to them, including damages.

While moral rights cannot be assigned, the creator can consent for certain things to occur which may otherwise breach their moral rights (e.g. modifying or altering material produced under a [Standard Contract](#)). A valid waiver must be made in writing, with full knowledge and consent of the creator. Therefore, it is crucial to ensure that appropriate written and signed consent to waive moral rights is obtained from all individuals who have moral rights in material produced under a Contract and that the material can be used by others without the risk of breaching any moral rights.

Generally, where design is to be produced under a [Standard Contract](#), the [Standard Contract](#) contains provisions requiring:

- where the Consultant or Contractor has moral rights in material produced under the Contract, the Consultant or Contractor to consent to the Principal and other relevant parties doing certain things that may otherwise breach their moral rights; and
- where other individuals have moral rights in material produced under the Contract, the Consultant or Contractor to obtain signed, written consent from those individuals for the Principal and other relevant parties doing certain things that may otherwise breach their moral rights.

INSURANCE FOR DESIGN WORK

Where design is to be undertaken under the [Standard Contracts](#), the Consultant or Contractor is required to hold professional indemnity insurance in accordance with the terms of the Contract. For more information in relation to professional indemnity insurance and why it is required, refer to the [Insurance](#) section.

SITE

Site is typically defined to mean the land and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract. This means that the site can potentially include multiple locations and can include places outside the area on which the works are to be physically constructed.

This section sets out the fundamental concepts and principles relevant to the site requirements and considerations such as access, possession and site conditions.

ACCESS AND POSSESSION

The Principal is required to facilitate a Consultant's performance of the services or a Contractor's work under the Contract by permitting use of the site. This is done by granting access to or possession of the site (as the case requires), and it is important to distinguish between the two.

Under the [Standard Building Consultancy Contracts](#), Consultants may require access to the site to, for example, perform tests, undertake inspections or carry out whatever work is considered necessary to inform or progress the services. If the Consultant has been engaged to design or document the construction of a project, the Consultant must consider the nature of the site and any site-specific access or possession constraints, and any other site related factors that may be relevant to the Contractor's construction of the works.

Typically, under the [Standard Building Construction Contracts](#), a Contractor will be granted possession of the site for the construction of the works and (where applicable) the Contractor will be the principal contractor for the purposes of Work Health and Safety legislation. If the Contractor is granted possession of the site, the Contractor will have control and exclusive use of the site, but must allow the Contract Manager and the Principal and its employees and agents access to the site to allow them to perform their functions under the Contract or for any other reasonable purpose.

If the Contractor is only granted access to the site, the Contractor will be entitled to access so much of the site as is needed to perform the relevant work, but the site will remain under the control of and be accessible to whomever has possession of the site and other authorised users. In these circumstances and where applicable, the Contractor will typically not be the principal contractor for the purposes of Work Health and Safety legislation, but will still have work health and safety obligations.

Access but not possession of the site might be necessary when:

- the services or works need to be completed while the site remains operational; or
- there are multiple Contractors performing work on the site and therefore one Contractor cannot be granted exclusive use (e.g. in construction management projects).

The times for granting access to or possession of the site to the Contractor must be stipulated in the Annexure by the Project Manager. The times stipulated in the Annexure should be as soon as possible and reasonably required by the Contractor to commence the work without delay.

At the time of granting access to or possession of the site to the Contractor, the site should be in the state that would have been reasonably anticipated by the Contractor at the time of tendering, having regard to the requirements of the Contract.

Subject to the terms of the Contract, it may be necessary to withhold giving possession of the site to a Contractor where:

- the Contractor is responsible for effecting insurance policies and has not provided evidence of insurance in accordance with the terms of the Contract; or
- the Contractor has not provided Security (other than retention moneys) required by the Contract.

If, after Contract award, there are concerns regarding the Principal's ability to grant access to or possession of the site, the Contractor should be notified in accordance with the Contract and the matter preventing access to or possession of the site should be rectified as a matter of urgency.

A delay in providing either access to or possession of the site caused by the Contract Manager, Principal or its employees or agents (other than for fault of the Contractor), may give the Contractor an entitlement to claim an extension of time and additional costs as a result of the delay.

Some of the [Standard Contracts](#) prescribe a period of delay in giving access to or possession of the site after which the delay will be regarded as a substantial breach of the Contract. This means that if the Principal fails to give the Contractor access to or possession of the site by the expiry of the period set out in the Contract, the Principal will be in substantial breach of the Contract. It is important to refer to the specific Contract when determining the remedies and entitlements available in such circumstances.

If the matter preventing access to or possession of the site is, or becomes, anticipated to be ongoing, other provisions of the Contract (e.g. those dealing with a right to suspend) should be considered to determine the most reasonable manner in which to manage the delay and avoid a substantial breach of Contract by the Principal.

LATENT CONDITIONS

Under the [Standard Building Construction Contracts](#), latent conditions are typically defined as physical conditions on or below the site or its surroundings (excluding weather conditions or results of weather conditions) which differ materially from what the Contractor (as a competent and experienced Contractor) should reasonably have anticipated at the time of tender if it had reviewed all information provided to it, inspected the site, and made all reasonable enquiries. Latent conditions most commonly involve ground conditions, but can also involve other things. For example, a Contractor undertaking a building refurbishment or extension project may encounter existing structure or services which could not reasonably have been anticipated by the Contractor at the time of tender.

Under the [Standard Building Construction Contracts](#), the Contractor is obliged to deal with latent conditions, but may be entitled to additional time and cost to do so. The work of dealing with a latent condition is not, of itself, a variation. For more information about what constitutes a variation under the [Standard Contracts](#), refer to the [Variations](#) section.

Generally, the Contract sets out provisions relating to the notification required when a latent condition is encountered. The prescribed time within which the notification must be given (which is typically without delay) is of importance because the Contract Manager may be able to direct action that could lessen the consequences of the latent condition (including time and cost implications). For example, rather than allowing the Contractor to deal with the latent condition as part of the work under the Contract, the Contract Manager may instead direct a variation to avoid the latent condition in whole or part, to mitigate the time and cost implications to the project.

Under the [Standard Building Construction Contracts](#), the Principal bears the risk of time and cost implications of latent conditions. Therefore, when preparing tender documents for single stage Contracts, Consultants engaged by the Principal should be required to take all reasonable steps to investigate and document the physical conditions on and below the site, so as to mitigate the risk and consequence of latent conditions claims. Under two stage Contracts, while the Principal may undertake preliminary investigations, detailed site investigations will typically be managed by the Contractor during stage one of the Contract, and accounted for in the Contractor's Guaranteed Construction Sum ("GCS") Offer or Stage Two Offer.

SUBCONTRACTING

Under the [Standard Building Consultancy Contracts](#), a Consultant is engaged to provide services (e.g. those of an architect, programmer, engineer or other technical specialist but excluding professional contractors and labour hire workers) in accordance with the terms of reference provided by the Principal, which details the Principal's requirements in respect of the services. Depending on the services required, the Consultant often engages other consultants as subcontractors to perform particular technical services under the Contract (e.g. where the Consultant is an architect and engages a structural engineer as a subcontractor to provide engineering services in respect of the architect's design).

Under the [Standard Building Construction Contracts](#), a Contractor is engaged to construct the project, either according to the design provided by the Principal or, in the case of a design and construct Contract, according to a design to be produced by the Contractor (which is in accordance with the Principal's requirements for the project). Contractors usually don't perform the whole of the work under the Contract themselves and typically engage subcontractors to perform discrete portions of the work under the Contract.

In the case of the Two Stage Managing Contractor Contract, there are constraints on the Contractor in relation to the performance of construction work, which results in most (if not all) of the construction work being undertaken by subcontractors. For more information, refer to the [Guide to Collaborative Contracting](#) which supports the successful delivery of Queensland Government building construction projects under the two stage building construction Contracts.

The Principal is not a party to the contracts between a Consultant or Contractor and their subcontractors. The Consultant or Contractor remains responsible for delivering the services or the work under the Contract regardless of whether they perform the services or work themselves or engage subcontractors to perform the services or work. The Consultant or Contractor is liable to the Principal for the acts and omissions of subcontractors (as well as employees and agents of subcontractors) as if they were acts or omissions of the Consultant or Contractor.

Accordingly, all correspondence and instructions must be provided to the Consultant's or Contractor's representative, and not directly to a subcontractor. Similarly, if a subcontractor corresponds directly with the Contract Manager or Principal, or requests direct payment or advice in relation to having not received payment from a Consultant or Contractor, the subcontractor should be advised to correspond directly with the party with whom they have a contract.

Prior to entering into a subcontract, the Contractor is typically required to seek approval, which should not be unreasonably withheld, from the Contract Manager. Most of the [Standard Contracts](#) set out requirements for subcontracts (including any required terms) and provide a copy of the request for approval template which is to be submitted to the Contract Manager. It is important to confirm that the request for approval and the requested subcontractor meet the requirements set out in the Contract, including the request for approval template.

It may be reasonable to reject a request to subcontract where:

- the Consultant/Contractor or subcontractor has not complied with the subcontracting requirements under the Contract;
- the subcontractor indicates that it cannot or will not comply with any of the requirements for subcontracting; and/or
- there is a relevant restriction on an applicable Queensland Government registration system or database.

The above also applies to sub-subcontracting, which is where a subcontractor engages another party to perform part of the subcontract work it has been engaged to perform.

SELECTED SUBCONTRACTORS

The [Standard Building Construction Contracts](#) provide for circumstances (which should be very limited) where the Principal requires the Contractor to select from particular subcontractors identified by the Principal to perform certain components of the work under the Contract. The Principal may identify one or more subcontractors from which the Contractor must select, for one or more components of work. The Principal must list the selected subcontractors in the tender documents.

The Contractor remains solely responsible for the work carried out by selected subcontractors in the same way that the Contractor is responsible for the work of the subcontractors it has chosen. Therefore, the selection of subcontractors is typically best treated as a matter for the Contractor.

The Principal may consider listing selected subcontractors in the tender documents in circumstances where:

- there is a genuine need for the selected subcontractor/s to perform the related work (e.g. the subcontractor has unique expertise or has had prior involvement in the project);
- the selection of the subcontractor/s complies with applicable procurement policies; and
- the Principal has satisfied itself that the selected subcontractor/s meet all eligibility requirements to perform the related work.

The work of selected subcontractors may be the subject of a provisional sum. For more information about provisional sums, refer to the [Payment](#) section.

LISTED CONSULTANTS

For information in relation to listed consultants under the two stage [Standard Building Construction Contracts](#), refer to the [Guide to Collaborative Contracting](#) which supports the successful delivery of Queensland Government building construction projects under the two stage building construction contracts.

QUALITY

Quality is a term used to describe the standard of the services or works to be completed under the Contract.

This section sets out the fundamental concepts and principles relevant to obligations relating to the performance and quality of the services and works under the [Standard Contracts](#).

PERFORMANCE OF SERVICES

Under the [Standard Building Consultancy Contracts](#), the Consultant must perform the services required under the Contract (e.g. those of an architect, programmer, engineer or other technical specialist, etc) according to the specified standard, which is generally to the standard of skill, care and diligence expected of a skilled and

competent professional practising in the particular fields relevant to the services. However, if a higher standard has been represented by the Consultant to the Principal in relation to the Contract, the Consultant must uphold that higher standard.

In addition to the specific requirements set out in the tender documents, the Consultant is required to:

- regularly consult with the Principal;
- attend any meetings and briefings reasonably required by the Principal relating to the services; and
- allow the Principal to review and discuss the documents and deliverables in relation to the services (whether complete or not). However, the Consultant remains responsible for the services despite any review or acceptance of the services by the Principal.

The above obligations assist the Principal in reviewing the quality of the deliverables being prepared by the Consultant and the Contract Manager should therefore ensure that these requirements are adequately fulfilled.

CONSTRUCTION WORK

Under the [Standard Building Construction Contracts](#), the Contractor is required to execute the work under the Contract according to the specified standard of workmanship and in accordance with the requirements of the Contract. The Contractor is also required to comply with statutory requirements applicable to the work under the Contract.

There are some key actions the Contract Manager can undertake to monitor quality of the work under the Contract. These are set out below.

DILAPIDATION REPORTS

A dilapidation report is a photographic and written report which documents the condition of existing property which may be affected by the work under the Contract (including, for example, neighbouring properties) and should be prepared prior to any work on the site. Typically, the project specific documentation for the project will include a requirement for the Contractor to prepare and provide to the Contract Manager and the Principal a dilapidation report. This is good practice and ensures that the parties have a mutual understanding of the conditions existing prior to the commencement of any work under the Contract.

After the work has been completed, the dilapidation report can be used to compare the condition before and after the work under the Contract was performed.

Dilapidation reports are an important tool in:

- identifying and attributing any damage that occurs as a result of the work under the Contract
- responding to or defending claims for damage that is not related to the work under the Contract
- helping to prevent disputes and legal issues that may arise in relation to liability for damage.

INSPECTING THE WORKS

Even though the Contractor has an obligation to execute the work under the Contract to the standards and quality required by the Contract, the Contract Manager should satisfy itself that the work is being executed accordingly. However, this will not affect the Contractor's obligations under the Contract.

The Contract Manager or, where there is a Clerk of Works appointed, the Clerk of Works, should ensure that they attend site on a regular basis in order to have awareness of the progress and quality of the works, particularly where there are hold points for inspections or significant stages of work under the Contract being performed (e.g. concrete pours) and regardless of any requirement of the Contractor to provide certification in accordance with the *Building Act 1975* (Qld) and the *Building Regulation 2021* (Qld).

The Contract Manager should make and keep thorough records of their inspections, particularly in relation to work that will later be covered up. Inspecting the works is not only important for the prompt assessment of payment claims (e.g. to identify work for which payment is properly due in accordance with the Contract), but it also enables the early identification and remedying of work that is not in accordance with the Contract.

However, caution should be exercised when looking to address, with the Contractor, work not in accordance with the Contract during construction. For more information, refer to the [Defects](#) section.

In addition, testing may be used (by direction from the Contract Manager) to verify whether any material or work under the Contract is in accordance with the Contract. The [Standard Building Construction Contracts](#) set out the requirements in relation to conducting testing, and liability for the cost of testing.

CONSULTANTS

The Contract Manager is not required to be an expert in every aspect of the work under the Contract and may require the assistance of Consultants with the necessary specialist expertise to inspect the work under the Contract and provide the Contract Manager with an opinion about the compliance of the work with the requirements of the Contract. This is particularly the case in relation to design and construct Contracts. While the Contract Manager may obtain specialist technical advice, the Contract Manager must nevertheless form their own opinion about whether the work under the Contract complies with the requirements of the Contract.

CERTIFICATION

The Contractor is typically required to obtain certification of compliance of the works with applicable statutory requirements, including the *Building Act 1975* (Qld) and the *Building Regulation 2021* (Qld). Notwithstanding any certification of statutory compliance, reference should also be made to the contract documents which may call for a higher standard for certain aspects of the works.

QUALITY ASSURANCE SYSTEMS

Under some of the [Standard Building Construction Contracts](#), the Contractor is required to implement a quality assurance system which conforms to the requirements of the particular Contract and independent standards (e.g. International Organization for Standardization (ISO), Australian Standards (AS)).

A quality assurance system is a set of requirements, processes, controls and procedures that aims to ensure the quality of the works (in accordance with the requirements of the Contract) and achieve compliance with the Contract. The existence or implementation of a quality assurance system does not relieve the Contractor of any obligations under the Contract.

The Contractor is required to provide the Contract Manager with reasonable access to the quality assurance system to enable monitoring and quality auditing. Under some Contracts, the Contract Manager must approve the quality plan, and the Contractor must comply with any directions from the Contract Manager in respect of the plan. When reviewing the quality assurance plan, Contract Managers should identify any contractual or project specific requirements to ensure that compliance with the Contract will be achieved.

DEFECT RECTIFICATION

Under the [Standard Building Construction Contracts](#), a defect is where work under the Contract does not achieve the standard required by the Contract, which may include work not being in accordance with the drawings, specifications, project brief, performance standards and industry practice, and includes defects in workmanship and omissions.

Defects can occur at any time, and there are contractual provisions in the Contract which require the rectification of defects throughout construction and during the [defects liability period](#).

If the Contractor identifies defective work, it is obliged to rectify the defective work to ensure that it complies with the requirements of the Contract.

The Contract Manager may also identify and notify the Contractor of defective work.

Further, testing may be used (by direction from the Contract Manager) to verify whether any material or work under the Contract is in accordance with the Contract. The [Standard Building Construction Contracts](#) set out the requirements in relation to conducting testing, and liability for the cost of testing.

Each Contract sets out how defects should be notified to the Contractor, directed to be rectified and options available to the Principal in the event that the Contractor fails to attend to defects in accordance with the Contract.

However, Contract Managers should exercise caution when directing the Contractor to rectify defects prior to practical completion (or prior to substantial completion in the case of trade Contracts used for project delivery by construction management), particularly where the relevant aspect of the work is incomplete, to avoid directing

rectification in a manner which may impact the Contractor's progress or sequencing of the work under the Contract. For information about practical completion and substantial completion, refer to the [Time](#) section.

The Contract Manager may require the assistance of Consultants to identify defects and determine whether they have been properly rectified, particularly for specialist, technical or complex aspects of the work. While the Contract Manager may obtain specialist technical advice, the Contract Manager must nevertheless form their own opinion about whether the work under the Contract complies with the requirements of the Contract.

DEFECTS

Defect/s is a term used in the [Standard Building Construction Contracts](#) to describe where work under the Contract is not performed in accordance with, or does not comply with, the requirements of the Contract.

This section sets out the fundamental concepts and principles relevant to obligations and requirements in relation to defective work after practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management), and after final completion (or project final completion in the case of trade Contracts used for project delivery by construction management).

For more information on defect rectification before practical completion or substantial completion, refer to the [Defect Rectification](#) section.

DEFECTS LIABILITY PERIOD

The [Standard Building Construction Contracts](#) provide for a defects liability period.

The defects liability period is the period, commencing from the date of practical completion (or the date of substantial completion in the case of trade Contracts used for project delivery by construction management) and lasting for the duration specified in the Contract, during which the Contractor is required to rectify any defect (including any omission) in the work under the Contract for which the Contractor is responsible, in accordance with the terms of the Contract. For more information about practical completion and substantial completion, refer to the [Time](#) section.

If there are separable portions under the Contract, a separate defects liability period will apply to each separable portion. For more information on separable portions, refer to the [Time](#) section.

During the defects liability period, the Contractor must (except in very specific circumstances) be given the opportunity to rectify its defective work. Having the Contractor rectify the defective work:

- allows the Contractor the ability to mitigate any potential loss by having the opportunity to rectify the defective work itself; and
- is usually more cost effective and efficient than the Principal organising for a third party to perform the rectification work and attempting to recover the associated costs from the Contractor.

Each of the [Standard Building Construction Contracts](#) sets out how defects should be notified, directed to be rectified and the rights and options available to the Principal in the event that the Contractor fails to attend to defects in accordance with the Contract.

The defects liability period lasts for the period specified in the Contract and does not automatically extend, even if defects in the work under the Contract that were notified to the Contractor during the defects liability period have not been rectified. Some of the [Standard Building Construction Contracts](#) provide for the Contract Manager to direct that a further defects liability period will apply to rectified defects. It is important that, if the Contract Manager intends to apply a further defects liability period, they comply strictly with the terms of the Contract in doing so.

The Contract Manager's ability to direct the Contractor to rectify defects during the defects liability period ceases upon its expiry. However, the expiry of the defects liability period will not affect the Contractor's obligations to rectify defects already notified to the Contractor but not yet rectified. In addition, the [Standard Building Construction Contracts](#) enable the Contract Manager to direct the Contractor to rectify materials or work that are not in accordance with the Contract discovered after the expiry of the defects liability period but prior to final completion (or project final completion in the case of trade Contracts used for project delivery by construction management) of the Contract. For more information about final completion, refer to the [Time](#) section.

Contractors, Contract Managers and Principals should continue to diligently perform their respective obligations under the Contract as matters of priority during the defects liability period.

The expiry of the defects liability period is typically marked by final completion obligations under the Contract (including in relation to a final payment schedule and release of Security). For more information on obligations relating to final completion, refer to the Final Completion section.

DEFECTS AFTER FINAL COMPLETION

Latent defects are defects that cannot be readily observed or reasonably seen or discovered during an inspection but become apparent over time or after use, sometimes long after project completion. While the concept is relevant, the term is typically not used in the [Standard Contracts](#).

Because of the nature of latent defects, it is possible for a latent defect to be identified after final completion of the Contract. While the Contractor remains responsible for latent defects discovered after final completion, its liability is in damages for breach of contract, and it is not obliged to rectify the defects. Despite this, many Contractors value their reputation for delivering a quality product and will prefer to undertake prompt rectification if a latent defect is brought to their attention.

For more information about completion, refer to the [Time](#) section.

If a latent defect is discovered after final completion of the Contract, the following steps should be considered by the Principal:

- promptly identify and undertake any work necessary to make the building and its surrounds safe
- undertake the necessary investigations to determine the cause of the defect and whether the defect is one for which the Contractor is considered responsible
- if the Contractor is considered responsible for the defect, notify the Contractor of the existence of the defect and why it is considered to be the Contractor's responsibility
- if the Contractor fails to respond or is unwilling to rectify the defect, have the rectification work undertaken
- maintain detailed records (including for example, photographs, technical reports, scopes of work, quotes, invoices, timesheets) of the defect and any damage caused by the defect prior to its rectification, and of the rectification work undertaken, together with all associated costs
- contact [Contract Services](#) for further assistance.

Latent defects, once discovered, should not be left untreated for extended periods to avoid the potential for ongoing damage to the building and its surrounds. It is also important to act promptly because there are statutory limitation periods that apply to latent defects, and which impose a time limit within which the Principal must have taken appropriate action against a Contractor to recover any damages suffered.

TIME

Time refers to the rights and obligations of the Consultant or Contractor to commence, progress with and complete the services or work under the Contract.

This section sets out the fundamental concepts and principles relevant to time and time related costs under the [Standard Contracts](#).

TIME FOR COMMENCEMENT

Unless there is a specific time prescribed in the Contract, the Consultant or Contractor is required to commence and expeditiously proceed with the services or the work under the Contract upon Contract award.

A failure by the Consultant or Contractor to commence the services or work under the Contract upon Contract award or otherwise within the time prescribed by the Contract may constitute a substantial breach of Contract (referred to as default) by the Contractor or Consultant, which may entitle the Principal to exercise rights under the Contract. For more information on defaults, refer to the [Default and Termination](#) section.

Regardless, the cause of the Consultant's or Contractor's failure to commence the services or work under the Contract by the required time should be investigated.

The Principal, Contract Manager and employees or agents of the Principal must take care to ensure that they do not prevent or delay the Consultant or Contractor from commencing the services or work under the Contract. If the Principal, Contract Manager or employees or agents of the Principal delay the Consultant or Contractor in commencing the services or work under the Contract, the Consultant or Contractor may be entitled to relief by way of an extension of time and additional payment. Depending on the terms of the Contract, if certain other events cause the delay, the Consultant or Contractor may be entitled to both an extension of time and additional payment, or may only be entitled to an extension of time. Where the Consultant's or Contractor's failure to commence the services or work under the Contract relates to an issue with the granting of access to or possession of the site, refer to the [Site](#) section for more information.

TIME FOR COMMENCEMENT UNDER STANDARD BUILDING CONSTRUCTION CONTRACTS

Where a Contractor is required to carry out work on the site, the Contractor is typically required to give notice to the Contract Manager of when it intends to commence the work on the site, and there may be a minimum notification period under the Contract before the Contractor is permitted to commence the work. Upon receipt of such notice, the Contract Manager should promptly ensure that the site is available for the Contractor's use and that anything preventing or hindering the Contractor's access or possession are promptly addressed. For more information about access to and possession of the site, refer to the [Site](#) section.

If a Contract has [separable portions](#), the provisions relating to time for commencement may apply separately to each separable portion.

TIME FOR COMPLETION

The time for completion of the services or work under the Contract is the time set out in the Contract by which the Consultant or Contractor must complete the services or work under the Contract, to the extent provided in the Contract.

The time for completion may be extended in accordance with the terms of the Contract.

TIME FOR COMPLETION UNDER STANDARD BUILDING CONSTRUCTION CONTRACTS

With the exception of trade Contracts used for project delivery by construction management, the time for completion is referred to as the "date for practical completion". In the case of trade Contracts used for project delivery by construction management, the time for completion of the works under each trade Contract is referred to as the "date for substantial completion".

Under the single stage [Standard Building Construction Contracts](#), the date for practical completion (or date for substantial completion) is stipulated in the Annexure to the Contract by the Project Manager when preparing the tender documents.

Under the two stage [Standard Building Construction Contracts](#), a *target* date for practical completion is stipulated in the Annexure to the Contract by the Project Manager, with the parties working collaboratively during stage one to jointly agree upon a date for practical completion, which is then nominated by the Contractor in the Contractor's Guaranteed Construction Sum ("GCS") Offer or Stage Two Offer. There may be appropriate constraints on the target date for practical completion stipulated in the Contract.

If the Contract has [separable portions](#), the provisions relating to practical completion (or substantial completion) apply separately to each separable portion, meaning that each separable portion has its own date for practical completion (or date for substantial completion).

Typically, the Contract is not at an end upon achieving practical completion (or substantial completion), as there may be a defects liability period followed by a final accounting process, whereby the Contractor is required to make a final payment claim and the Contract Manager is required issue the Final Certificate or Final Payment Schedule. For more information about the defects liability period or the Final Certificate or Final Payment Schedule, refer to the [Defects](#) section or the [Payment](#) section, respectively.

PROGRESS

A failure by the Consultant or Contractor to proceed with the services or work under the Contract with due expedition and without delay or at a reasonable rate of progress may constitute a substantial breach of Contract (referred to as a default) by the Consultant or Contractor, which may entitle the Principal to exercise rights under the Contract. For more information in relation to defaults, refer to the [Default and Termination](#) section.

In any event, the cause of the Consultant's or Contractor's failure to proceed as required by the Contract should be investigated and dealt with in accordance with the provisions of the Contract.

The Contract Manager, Principal and its employees or agents must also take care to ensure that they do not delay the Consultant or Contractor from proceeding with the services or work under the Contract. If the Principal, Contract Manager or employees or agents of the Principal delay the Consultant or Contractor in proceeding with the services or work under the Contract, the Consultant or Contractor may be entitled to relief by way of an extension of time and additional payment. Depending on the terms of the Contract, if certain other events cause the delay, the Consultant or Contractor may be entitled to both an extension of time and additional payment, or may be entitled to an extension of time but not additional payment.

If the Consultant or Contractor is or will be delayed in carrying out the services or work under the Contract, the [Standard Contracts](#) generally set out the time and manner in which the Contractor must notify the Contract Manager of the delay, and submit any associated claim.

The Contract Manager can also extend the time for completion, in accordance with the Contract. For more information on extensions of time, refer to the [Extensions of Time](#) section.

PROGRAM

A program sets out the manner and sequence in which work is to be carried out, including the times, durations, sequencing and relationships between activities (e.g. when each activity is planned to commence, whether it relies on the completion of an earlier activity before it can be commenced, the activity duration and its planned completion). Programs for building construction projects may be complex because of the number of activities and the relationships between activities involved in completing the works.

Most of the [Standard Building Construction Contracts](#) require the Contractor to prepare, submit and maintain an updated program in accordance with the requirements of the Contract, showing how the Contractor plans to carry out and complete the work under the Contract. However, depending upon the Project Team's approach to contract management for the specific project, additional program requirements may be included in project specific documentation. Any additional requirements provided in the project specific documentation should be consistent with the requirements set out in the [Standard Building Construction Contracts](#). The Principal may engage a Consultant with the necessary specialist expertise (i.e. a programmer) to assist with this.

The Contractor's program should show the critical path to achieve completion of the works. The critical path is the longest sequence of linked activities, where the sum of the duration of each linked activity determines the overall duration to achieve completion of the whole of the works. A delay to the progress of an activity that is on the critical path will, without acceleration or resequencing of the work, cause the overall duration for completion to be extended, and is sometimes referred to as a "critical path delay" or a "critical delay".

The Contractor's program is a useful tool to assist in monitoring progress and dealing with delay and disruption to the work under the Contract. Therefore, it is good practice to maintain a properly prepared program, which is updated to record actual progress, variations, changes in logic, methods and sequences, mitigation or acceleration measures and any extensions of time granted by the Contract Manager. Given the purpose of the Contractor's program, it is important that the Contract Manager reviews the program, and any updates to it, and raises any concerns with the Contractor in writing.

Where there are [separable portions](#), the program requirements should be applied separately for each separable portion, given that each separable portion will have its own date for practical completion (or date for substantial completion in the case of trade Contracts used for project delivery by construction management).

It is also important for the Project Manager to maintain an overall project program (that is separate to anything required under the Contract) inclusive of all activities required to plan, approve, design, document, construct, certify and commission the works. These activities may include those which must be completed before a Contract can be awarded to a Consultant or Contractor, and activities which may constrain the Consultant's or Contractor's ability to complete certain activities. The overall project program:

- should be maintained as a separate, internal management tool (i.e. does not become a tender/contract document and is not shared with the Contractor)
- is a useful tool to enable the Project Team to proactively plan and manage the performance of the Principal's obligations and avoid delaying the work of the Consultant or Contractor

- should be sufficiently detailed and regularly monitored and updated to record actual progress and any changes in activities, logic or sequencing.

The [Standard Building Construction Contracts](#) typically require either party to notify the other and the Contract Manager if they become aware of a delay. Therefore, maintaining an overall project program will assist the Principal in meeting this obligation (e.g. it provides a useful tool for the Project Team to use in proactively identifying and mitigating potential delays to activities that are the responsibility of the Principal) and support the Contract Manager in performing their role effectively.

EXTENSIONS OF TIME

Where the Consultant or Contractor is delayed in completing the services or work under the Contract, the Consultant or Contractor may be entitled to an extension to the time to complete the services or work.

This section sets out the fundamental concepts and principles relevant to extensions of time under the [Standard Building Consultancy Contracts](#) and [Standard Building Construction Contracts](#).

EXTENSIONS OF TIME UNDER STANDARD BUILDING CONSULTANCY CONTRACTS

Where the Consultant is delayed in completing the services, the Consultant may be entitled to an extension of time.

Some of the [Standard Building Consultancy Contracts](#) prescribe the events which give rise to this entitlement (e.g. acts or omissions of the Principal, including variations). However, the Consultant is required to have notified the Principal in accordance with the provisions of the Contract (including within any timeframes and with sufficient evidence).

Where the Consultant is entitled to an extension of time, the Consultant may also (but not in all circumstances) be entitled to additional costs. For more information on delay costs, refer to the [Delay Costs](#) section.

EXTENSIONS OF TIME UNDER STANDARD BUILDING CONSTRUCTION CONTRACTS

The [Standard Building Construction Contracts](#) typically provide the Contractor with an entitlement to an extension of time where:

- the Contractor is or will be delayed in reaching practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management) – that is, the Contractor has been delayed in the progress of an activity that is on the critical path (for more information about the critical path, refer to the [Program](#) section);
- the delay is caused by a qualifying event, determined by reference to the Contract; (i.e. an event listed in the Contract as entitling the Contractor to an extension of time); and
- the Contractor has satisfied any other requirements of the Contract, including for example:
 - taking all reasonable or necessary steps to avoid the occurrence of the event and minimise the consequences of the delay; and
 - giving timely notice of the potential delay, as required by the Contract.

Generally, the [Standard Building Construction Contracts](#) set out the procedure to be followed in respect of the occurrence (or likely occurrence) of a delay event. That procedure typically specifies the timeframes within which:

- the parties (but usually, the Contractor) must notify the other in respect of a possible delay in achieving practical completion (or substantial completion);
- the Contractor must notify the Principal that it is or may be entitled to an extension of time to the date for practical completion (or the date for substantial completion);
- the Contractor must submit a claim for an extension of time to the Contract Manager; and
- the Contract Manager must respond to the Contractor's claim for an extension of time, in writing, by either granting a reasonable extension of time or giving the Contractor the reasons for not granting the extension of time claimed.

It is important to ensure that matters related to progress and delay are dealt with as the work progresses (and within the timeframes prescribed in the Contract), including having Contract Managers promptly assess claims and grant extensions of time where there is entitlement, because extensions of time:

- relieve the Contractor of liability for liquidated damages during the period of the extension and enable the Contractor to reprogramme the works to completion; and
- protect the Principal's right to liquidated damages, in the event that the Contractor fails to achieve practical completion (or substantial completion) by the adjusted completion date.

It is also important to refer to the Contract to determine the specific requirements for submitting, assessing and responding to claims for extensions of time. Where no time is specified for the Contract Manager's response, the Contract Manager must respond within a reasonable time.

The Principal may engage a Consultant with the necessary specialist expertise (i.e. a programmer) to assist with such assessments. However, as the Contract Manager is acting as certifier in relation to the assessment of a claim for an extension of time, the Contract Manager must nevertheless form their own opinion.

The [Standard Building Construction Contracts](#) make provision for situations where the Contractor is prevented from achieving practical completion (or substantial completion) as a result of some act or omission of the Principal. In such cases, the Contractor will typically be entitled to claim an extension of time to account for the delay that has been caused by the Principal. The [Standard Building Construction Contracts](#) also provide that the Contract Manager may unilaterally extend the completion date for any reason (i.e. without the Contractor having submitted a claim for an extension of time).

The [Standard Building Construction Contracts](#) include such provisions to address a concept called the "prevention principle". The basic concept of the prevention principle is that one party (the first party) cannot insist on a condition being fulfilled by the second party, if it is the fault of the first party that the condition has not been fulfilled – for example, a failure by the Contractor to achieve practical completion by the date for practical completion, because of some act or omission of the Principal. In such cases, in the absence of a contractual mechanism to extend the date for practical completion, a Principal would not be entitled to the contractual remedies arising from the failure to achieve practical completion on time (such as liquidated damages), and time would be set at large (i.e. the contractual date for practical completion would not apply and, instead, the Contractor would only be required to achieve practical completion within a reasonable time).

For this reason, the [Standard Building Construction Contracts](#) include specific provisions which allow for extensions to the date for practical completion (or date for substantial completion), where delays have been caused by the Principal, or otherwise, unilaterally.

Accordingly, it is important that, where an entitlement to an extension of time arises, and the Contractor submits its claim in accordance with the contractual provisions relating to notifying of delay and claiming for extensions of time, a reasonable extension is granted, consistent with the provisions of the Contract.

The entitlement of the Contract Manager to grant unilateral extensions of time (i.e. the Contract Manager can, in its absolute discretion, grant an extension of time even where the Contractor hasn't submitted a valid claim for an extension of time, or hasn't claimed for an extension of time at all) is not something which they are required to do for the benefit of the Contractor, and should never be done in order to minimise a Contractor's entitlement to a compensable delay. However, unilaterally extending the time for practical completion (or substantial completion) may be necessary where the delay has been caused by some act or omission of the Principal and the Contract does not include a mechanism to extend time in those circumstances. Extending time in those circumstances is important to preserve the Principal's right to liquidated damages and prevent the time for practical completion (or substantial completion) being set at large. For any concerns or queries when looking to exercise this unilateral right, seek advice from [Contract Services](#).

Typically, the [Standard Building Construction Contracts](#) contain provisions which deal with the issue of concurrency. True concurrency is where there are two (or more) delay events, occurring at the same time, both (or all) of which cause actual critical delay in achieving practical completion (or substantial completion). As such, true concurrency is relatively uncommon.

For example, suppose the Contractor is commencing a concrete pour which is a critical path activity and, at the same time that the Principal issues a variation to change the slab, there is a significant event at the concrete plant and concrete cannot be delivered in any event. The causes of delay are at least potentially concurrent, and the Contract Manager should investigate the circumstances and refer to the Contract to determine how concurrency is dealt with in assessing any claim for an extension of time.

It is important to appreciate that while there may be multiple delay events occurring at approximately the same time, it does not necessarily mean that there are concurrent delays. On the contrary, in most cases, only one of the delay events will actually be driving the critical path at any given time. If a delay affecting the critical path has commenced, and thereafter another event occurs that would have caused a delay had it not been for the existing delay, that does not amount to a concurrent delay.

As a result, it is necessary to consider the precise timing of the relevant delay events, and in particular, which event occurred first in time. In the above example, if the event at the concrete plant occurred first, and had the result that concrete cannot be delivered for five days and then, the day after, the Principal issues the variation to change the slab, which takes five days to modify, the delay event which is affecting the critical path is the event at the concrete plant, that was the first in time to have occurred, and not the variation. While the issuing of the variation may prolong the delay (and entitle the Contractor to an extension of time and delay damages for any additional period of delay), the cause of the initial delay is the event at the concrete plant and the Principal's variation does not actually cause any critical delay until the cessation of the concrete plant delay. Accordingly, no true concurrency exists in this scenario. For there to be a concurrent delay, both delay events must affect the critical path at the same time.

The issue of concurrency can be complex, and often leads to disputes. The Contract Manager may require the advice of a Consultant programmer to assist in dealing with complex time-related claims and assistance is also available from [Contract Services](#).

Where the Contractor is entitled to an extension of time for practical completion (or substantial completion), it may also be entitled to [delay costs](#).

Where there are [separable portions](#), there will be a date for practical completion (or substantial completion) for each separable portion, and each separable portion will therefore have its own critical path (for more information about the critical path, refer to the [Program](#) section). Depending on the event, the Contractor may be delayed in reaching practical completion (or substantial completion) for one separable portion but not another, or the event may delay all separable portions. For example, the late delivery of a Principal supplied item may delay the separable portion within which the item is to be installed but have no impact on other separable portions. In contrast, wet weather may delay work to all separable portions.

Regardless, the provisions relevant to extensions of time apply separately to each separable portion, so the Contractor will need to satisfy the requirements of the Contract (including notification and claim requirements) separately for each separable portion and, similarly, the Contract Manager will need to grant extensions of time separately for each separable portion.

DELAY COSTS

Under the [Standard Contracts](#), an extension of time may entitle a Consultant or Contractor to additional payment (typically referred to as "delay costs").

Typically, under the [Standard Contracts](#), the Consultant's or Contractor's entitlement to delay costs arises upon the granting of an extension of time for which the Contract provides that delay costs are payable.

Therefore, the Consultant or Contractor will only be entitled to delay costs where:

- the Consultant or Contractor has been granted an extension of time; and
- the Contract provides that the event causing the delay for which the Consultant or Contractor has been granted the extension of time is one which entitles the Consultant or Contractor to delay costs.

As such, not all extensions of time will entitle the Contractor to delay costs.

Events that entitle a Consultant or Contractor to delays costs are typically those caused by the Principal or the Principal's employees, consultants, contractors or agents, and includes delays caused by the performance of variations, but may include other events.

Under the [Standard Building Consultancy Contracts](#), delay costs are calculated by determining the reasonable costs of and incidental to the delay.

Under the [Standard Building Construction Contracts](#), a daily rate is typically used to calculate delay costs, because the actual costs of delay associated with construction work can be complex and administratively burdensome to calculate, and difficult to agree upon. Depending on the [Standard Building Construction Contract](#), the Contractor may be required to provide a daily rate for delay costs in its tender or the rate may be calculated using an agreed formula set out in the Contract, or the Contract may require a combination of both.

Where there are [separable portions](#), the delay rate applicable to each separable portion will need to be determined by reference to the Contract.

SUSPENSION

Suspension is a temporary stop of all or part of the services or the work under the Contract.

The [Standard Contracts](#) contain provisions which give rights to the Principal and the Contractor or Consultant to suspend all or part of the services or the work under the Contract in particular circumstances.

It is important to refer to the Contract to determine the circumstances in which an entitlement to suspend the services or work under the Contract arises, any requirements or processes to be followed when suspending all or part of the services or work under the Contract, what the consequences of such a suspension are and the remedies available to either party in each circumstance.

For example, there are remedies (e.g. time and cost implications) available to the Consultant or Contractor where the suspension of services or work under the Contract is due to an act or omission of the Principal or its employees or agents and, therefore, the decision to suspend work should not be taken lightly.

Where suspension is being considered, or has occurred, [Contract Services](#) may be contacted for assistance.

COMPLETION

COMPLETION OF SERVICES UNDER STANDARD BUILDING CONSULTANCY CONTRACTS

Generally, the Consultant must complete the services and provide the deliverables by the time stated in the Contract.

The concepts of practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management) and final completion under the [Standard Building Construction Contracts](#) do not apply to the [Standard Building Consultancy Contracts](#). Rather, the Contract Manager should ensure that the Contract has been concluded by:

- ensuring the Consultant has completed the services and provided all deliverables in accordance with the Contract (including the terms of reference and other contract documents); and
- the Principal has paid all amounts due and payable to the Consultant in accordance with the Contract.

Variations or additional services cannot be requested or directed once the Contract has been completed.

PRACTICAL COMPLETION (OR SUBSTANTIAL COMPLETION UNDER TRADE CONTRACTS) UNDER STANDARD BUILDING CONSTRUCTION CONTRACTS

The Contractor must bring the work under the Contract to practical completion by the date for practical completion (or in the case of trade Contracts used for project delivery by construction management, to substantial completion by the date for substantial completion).

Generally, practical completion (or substantial completion) means the stage when:

- the work under the Contract is complete in accordance with the Contract, including but not limited to all plans and specifications for the works and all statutory requirements applying to the work under the Contract (e.g. relevant certification or approval), other than minor omissions and defects which will not, and the rectification of which will not, prevent or impair the normal use and occupation of the works;
- documents and other information required under the Contract which are essential for the use, operation and maintenance of the works have been supplied by the Contractor (e.g. [as built documentation](#) and operating manuals); and
- any other conditions precedent for practical completion (or substantial completion) specified in the Contract have been satisfied.

Practical completion (or substantial completion) is a factual event. Once the Contract Manager is satisfied that the work under the Contract has reached practical completion (or substantial completion) in accordance with the

Contract the Contract Manager must issue a certificate of practical completion (or substantial completion) within the time stated in the Contract or, if there is no time stated, within a reasonable time.

Upon practical completion (or substantial completion):

- the Principal takes over the care and control of the works (except outstanding work (if any) and those parts of the work under the Contract affected during the repair of a defect or the cleaning up of the site)
- the Principal becomes responsible for obtaining any relevant insurances for the completed asset (as the Principal takes possession of the asset and the Contractor is only required to hold works insurance for any outstanding work and those parts of the work under the Contract affected during the repair of a defect or the cleaning up of the site)
- a defects liability period commences
- part of the Security (including retention moneys) (usually 50% but enough so that the total amount held is not greater than 2.5% of the contract sum, in accordance with the QBCC Act) is returned to the Contractor
- variations for additional work, other than in respect of defects, can no longer be unilaterally directed.

Particularly as practical completion (or substantial completion) has the consequence of reducing the Principal's financial protection (i.e. Security is reduced), the certification of practical completion (or substantial completion) should not be taken lightly. Once certified, it cannot be un-certified (if for instance significant defects in the work are subsequently discovered, which could have been discovered upon reasonable inspection.) Similarly, the certification of practical completion (or substantial completion) cannot be delayed or withheld for reasons other than that practical completion (or substantial completion) as defined in the Contract has not yet been reached.

Accordingly, prior to granting practical completion (or substantial completion), it is important to carefully assess the works against the requirements of the Contract and, in particular, the specific requirements for practical completion (or substantial completion), to ensure that practical completion (or substantial completion) has in fact been achieved.

Where a Contract has [separable portions](#), the provisions relating to practical completion (or substantial completion) will apply separately to each separable portion. This means that there may be multiple dates of practical completion (or dates of substantial completion) under one Contract. Care should be taken in the management of separable portions to ensure that the provisions are administered appropriately at the required times for each respective portion.

SEPARABLE PORTIONS

Separable portions are provided for in most of the [Standard Building Construction Contracts](#). Separable portions allow for the division of the work under the Contract into distinct parts (portions) and are intended to assist with the progressive commencement and completion/ handover of sections of the works.

Separable portions can be created in two ways:

- the Project Manager may document separable portions in the tender documents for the Contract (e.g. to stage commencement or completion of portions of the works in a way that minimises disruption to an existing operational facility or maximises the operationalising of a new facility)
- the Contract Manager may direct the creation of separable portions, but only to the extent that the Contract Manager is authorised to do so under the Contract, which is typically only if the Contractor agrees to the creation of the separable portions or, otherwise, if a part of the works has reached a stage equivalent to practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management) but another part of the works has not reached such a stage.

When considering whether to create separable portions, it is important that the Principal can:

- freely and safely access and use each separable portion for its intended purpose

- obtain all necessary insurances in respect of the portion of the works the subject of the separable portion
- comply with all work health and safety obligations in respect of the portion of the works the subject of the separable portion.

When creating separable portions, it is important to clearly define each portion of the works and ensure that all works are assigned to a separable portion. For example, if the works comprise of two buildings and landscaping and each building is its own separable portion, a further separable portion should be created for the landscaping works.

The definitions of, and provisions relevant to, time for commencement, site, work under the Contract, Works, Security (including retention moneys), date for practical completion/substantial completion (and any extensions to such), date of practical completion/substantial completion, defects liability period, liquidated damages and delay costs, typically apply separately to each separable portion.

Generally, unless specific amounts for Security, liquidated damages and delay costs have been nominated in the Contract for the respective separable portions (which would typically only occur if the separable portions were included in the tender documents), the amounts for Security, liquidated damages and delay costs for each separable portion must be determined by the Contract Manager using the method of calculation required by the Contract.

LIQUIDATED DAMAGES

Under the [Standard Building Construction Contracts](#), liquidated damages are a pre-determined amount of damages that a Contractor is liable to pay to the Principal for the Contractor's delay in achieving practical completion by the date for practical completion (or in achieving substantial completion by the date for substantial completion, in the case of trade Contracts used for project delivery by construction management).

Liquidated damages are calculated by applying the daily rate stipulated in the Contract for each calendar day after the date for practical completion, until practical completion is reached (or the date for substantial completion until substantial completion is reached).

The daily rate for liquidated damages must be determined by the Project Manager and inserted in the annexure to the Contract, prior to calling for tenders. The daily rate for liquidated damages must be a genuine pre-estimate (i.e. not an arbitrary value used as a penalty) of the loss the Principal may incur in the event that the Contractor does not bring the work under the Contract to practical completion by the date for practical completion (or to substantial completion by the date for substantial completion). This means that the Contractor is aware, at the time of entering into the Contract, of the damages the Contractor will be liable for if completion is not achieved by the required date.

Where there are separable portions stipulated in the tender documents, there may also be a respective amount stipulated for liquidated damages applicable to the separable portion. Where there is a single rate for liquidated damages applicable to the whole of the work under the Contract and there are separable portions (either stipulated in the tender documents without a respective amount for liquidated damages applicable to the separable portion, or where separable portions are created during the term of the Contract) liquidated damages must be calculated in accordance with the Contract, typically on a pro-rata basis according to the ratio of the value of the separable portion to the Contract Sum.

Liquidated damages are generally the Principal's only entitlement to damages resulting from late completion of the works. The Principal cannot claim general damages for breach of Contract relating to a failure to complete the works on time, as well as liquidated damages (though the Principal retains the right to general damages in respect of non-time related breaches of contract, such as claims relating to defective work).

Liquidated damages are an automatic contractual entitlement. This means that the Contractor's liability for, and the Principal's entitlement to, liquidated damages will accrue with the progression of time, rather than upon the occurrence of a particular event or satisfaction of another precondition. The entitlement to and liability for liquidated damages under the [Standard Contracts](#) is not dependent upon certification by the Contract Manager that liquidated damages are due, nor upon any step being taken by the Principal (such as the exercise of a right of set off).

The Contract Manager is empowered to deduct liquidated damages from amounts otherwise payable to the Contractor in payment schedules, but is not obliged to do so. The Contract Manager may account for liquidated damages in payment schedules as the liquidated damages are progressively accrued, or the Contract Manager can account for liquidated damages in any subsequent payment schedule (as long as the entitlement remains). The failure to account for liquidated damages in any one payment schedule does not disentitle the Principal to

recovery of those liquidated damages at some later point. However, neither the Principal nor the Contract Manager should unintentionally or implicitly suggest that liquidated damages will not be enforced.

Where liquidated damages are not accounted for as they accrue, the Principal or Contract Manager should advise the Contractor in writing (preferably on the first occasion when liquidated damages could have been imposed) that while liquidated damages have not been applied in the particular payment schedule, the Principal's rights in respect of liquidated damages are reserved and that liquidated damages may be deducted in subsequent payment schedules, or otherwise recovered, whether by way of set off in accordance with the Contract or otherwise. However, the Principal's entitlement to liquidated damages is not waived or affected by the absence of such notice (provided that the Principal or Contract Manager do not unintentionally or implicitly suggest that liquidated damages will not be enforced).

While the Principal will not lose its entitlement to liquidated damages if it chooses not to progressively deduct them, recovery in practical terms may become more difficult, especially if the total liquidated damages accrued exceeds what remains owing to the Contractor.

In the event that the amount of liquidated damages owing exceeds the amount which remains payable to the Contractor, the Principal may have recourse to Security to recover the liquidated damages owed. Prior to doing so (and in any event, within 28 days of becoming aware of the entitlement to do so), it is important that the Principal notifies the Contractor of its intention to have recourse to the Security in accordance with section 67J of the QBCC Act.

For more information about having recourse to Security, refer to the [Security](#) section.

FINAL COMPLETION

The [Standard Building Consultancy Contracts](#) do not require the Contract to be finalised by way of a "final certificate" issued by the Contract Manager. For more information about completion under the [Standard Building Consultancy Contracts](#), refer to [Completion](#).

Under the [Standard Building Construction Contracts](#), the concept of final completion is the stage at which all obligations under the Contract have been fully satisfied and the Contract is effectively concluded. It is typically marked by the Contract Manager's issuance of a Final Certificate or final Payment Schedule, in which the Contract Manager certifies the final accounting under the Contract, and that the Contractor has satisfactorily met all of their obligations under the Contract, including the rectification of any defects identified during the defects liability period or prior to the issuing of the Final Certificate or final Payment Schedule. Upon the issuance of the Final Certificate or final Payment Schedule, the Principal is required to release any remaining Security being held.

Where there are separable portions under the Contract, final completion does not apply separately to each separable portion. The stage of final completion occurs following the expiry of the last defects liability period and applies to the whole of the work under the Contract.

Typically, under the [Standard Building Construction Contracts](#), there is a timeframe within which the Contractor is required to make a final payment claim. Upon the expiry of this timeframe, the Contract Manager is required to either issue the Final Certificate or final Payment Schedule (either in response to the final payment claim, or in any event if none has been made by the Contractor) or give reasons for not issuing the Final Certificate or final Payment Schedule. Regardless, the Contract Manager must comply with the provisions of the Contract and the BIF Act in respect of the final payment claim. For more information about payment claims, refer to the [Payment](#) section.

The issuance of the Final Certificate or final Payment Schedule means that the Contract is effectively concluded. It serves as evidence that the Contractor has fulfilled its contractual obligations and that the work under the Contract has been completed to the required standard, except in certain circumstances, such as fraud, latent defects, or errors that were not apparent at the time of issuance of the Final Certificate or final Payment Schedule. Therefore, it is important that the Contract Manager ensures that the Contractor has fulfilled all of its obligations under the Contract and that the Final Certificate or final Payment Schedule can be given as evidence of the satisfaction of all matters required under Contract.

VARIATIONS

A variation is a change to the services or the work under the Contract. A variation may require the Consultant or Contractor to increase, decrease, omit or change any part of the services or work under the Contract (e.g. the services, scope, character, quality, position, dimensions, method, timing and/or sequence) or perform more or less work.

The performance of a variation may entitle the Consultant or Contractor to additional payment, reflecting the value of the variation. It may also entitle the Consultant or Contractor to an extension of time, in circumstances where the performance of the variation will delay completing the services or achieving practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management).

As a variation is a change to the services or the work under the Contract, a variation should not be directed for services or work that is already required by the Contract (and may be set out or called for in documents forming part of the Contract, such as the terms of reference, drawings, specifications, Principal's project requirements or project brief, depending on the form of Contract). Therefore, when considering variations, the Contract Manager should ensure that they understand fully the scope of the services or work under the Contract required to be performed by the Consultant or Contractor.

While variations may arise due to a change in the requirements of the Client Agency, some variations are unavoidable. For example, variations might be necessary to enable the works to be completed in accordance with the original intent when unforeseen circumstances are encountered. In these circumstances, failing to respond to the issue and promptly direct a variation could result in delays and additional costs.

The Contract Manager should not unnecessarily delay directing unavoidable and/or urgent variations, while awaiting finalisation of matters such as Client Agency approval. Approval or authorisation to use budget contingency is a separate process and governance arrangements, including those set out in Client Agreements, should be structured to ensure they do not adversely impact the Contract Manager's performance of their obligations under the Contract. Refer to the [Roles and Relationships](#) section for more information.

Conversely, variations for changes to Client Agency requirements which are not essential to complete the works should not be directed unless adequate budget has been allocated for the work the subject of the variation. In these instances, undertaking a *proposed variation* process may be beneficial as this may assist the Client Agency is managing its budget and determining whether it can proceed with directing the work the subject of the variation.

Under the [Standard Building Construction Contracts](#), the Contractor may request a variation for its convenience (i.e. not an unavoidable variation). The Contract Manager is not obliged to approve the request and direct the variation, but should consider whether it is beneficial. Typically, the Contractor will not be entitled to additional time or cost for performing a variation for the Contractor's convenience. It is important that when approving the request and directing such a variation, the Contract Manager expressly confirms that it is a variation for the convenience of the Contractor, so that there is no misunderstanding as to the nature or reason for the variation.

In the two stage [Standard Building Construction Contracts](#), variations during stage one are dealt with differently to variations to construction work during stage two. The provisions specify that the Contract Manager may direct variations to change the project brief or incorporate alternative design solutions during stage one, but the Principal is not obliged to adjust the Principal's budgeted allowance as a result. Additionally, the Contractor may request a change to the project brief and the Contract Manager may approve or reject the request at their discretion.

Once a variation is directed, the services or work under the Contract the subject of the variation becomes part of the services or work under the Contract, and the provisions of the Contract apply to that work.

Unless the Contract expressly provides for it, caution must also be exercised when looking to omit by variation:

- all (or a substantial portion of) the remaining services or work under a Contract.
- any part of, or all of, the services or work under the Contract so that the Principal, or others on behalf of the Principal, can complete such services or work.

If such circumstances arise, [Contract Services](#) may be contacted for assistance.

DIRECTING VARIATIONS

Under the [Standard Contracts](#), the Contract Manager is empowered to direct the Consultant or Contractor to undertake a variation, but only to the extent provided for in the Contract.

The Consultant or Contractor cannot direct their own variations.

The Contract sets out the requirements for directing a variation. Generally, the Contract Manager must direct a variation in writing and, upon receipt of the written direction, the Consultant or Contractor must promptly comply with the variation.

Under the [Standard Building Construction Contracts](#), the directing of a variation is different to proposing a variation to the Contractor. To avoid any confusion about whether a variation is being directed or proposed, the variation should explicitly reference the relevant clause under which it is being issued.

Variations:

- should only be directed by the Contract Manager and only to the extent that the Contract Manager is empowered under the Contract to direct the variation
- unless unavoidable or urgent, should only be directed where there is confirmed budget for the variation
- should only be directed where they are within the general scope of the Contract (e.g. are not substantially more, less or different to the general scope of the Contract)
- should not be directed after practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management) (unless they relate to rectification of any defects or omissions in the work under the Contract during the defects liability period).

If the Consultant or Contractor receives a direction which is not described as a variation, but which they consider to be a variation, the Consultant or Contractor is required to notify the Contract Manager accordingly.

PROPOSED VARIATIONS

Proposed variations are provided for in most of the [Standard Building Construction Contracts](#). A proposed variation refers to a potential variation that is put forward to the Contractor by the Contract Manager, to establish the time and cost impacts of the potential variation so that the Principal can decide whether or not to proceed.

Typically, the Contract sets out the requirements for proposing a variation to the Contractor. Generally, the Contract Manager may notify the Contractor of a proposed variation, and the Contractor must provide the Contract Manager with an offer that sets out the effect of the variation on matters such as time and cost.

The Contract Manager can either accept or reject the offer for the proposed variation. If the offer is accepted, the Contract Manager is still required to direct the variation, and the value for the variation (and any associated extension of time) is in accordance with the Contractor's accepted offer. If the offer is rejected, the Contract Manager can still direct the variation; however, the variation will be valued in accordance with the valuation provisions of the Contract. Where the offer is rejected and the variation is nonetheless directed, the Contractor may continue to claim the time and cost impacts of the variation in accordance with the rejected offer. Therefore, variations should only be proposed before being directed when there is a genuine need for the Principal to know the time and cost impacts of the potential variation, to decide whether or not to proceed with the variation.

Until the variation is directed pursuant to the provisions of the Contract, either in response to the proposal or separately, the work the subject of the proposed variation does not form part of the Contract.

As such, in notifying the Contractor of a proposed variation, the Contract Manager must be clear that it is not a direction to perform the variation. This can be achieved by explicitly stating that the proposed variation is notified under the clause which relates to proposed variations.

Given the administrative burden associated with having the Contractor review and offer on proposed variations, the Contractor should only be requested to respond to a proposed variation where there is a genuine intention to have the work the subject of the proposed variation incorporated into the work under the Contract.

Some [Standard Building Construction Contracts](#) contain provisions which provide that the Contractor may also be entitled to additional costs for preparing an offer for a proposed variation, where the Contractor has been required to expend time and effort. For example, this may be because:

- the proposed variation requires substantial work to price and assess the time impacts
- the Contractor has had to coordinate many parties (e.g. subcontractors and subconsultants) to formulate a response to the proposed variation
- the Principal has sought multiple responses from the Contractor in relation to the proposed variation
- the proposed variation does not proceed.

VALUING VARIATIONS

The Contract sets out when a cost adjustment is to be made to account for a variation and how variations are to be valued.

However, it is important to be aware that not all cost adjustments under the [Standard Contracts](#) are variations within the meaning of the term, even if the cost adjustment is required to be valued "as if it were a variation" (e.g. provisional sums). Only variations directed pursuant to the provisions empowering the Contract Manager to issue variations, should be regarded as variations under the Contract.

When undertaking valuations, the Contract Manager should refer to the specific provisions of the Contract to determine whether the obligation is on the Consultant or Contractor to provide to the Contract Manager a price for the work to be valued, or whether the obligation is on the Contract Manager to value that work regardless of the information provided by the Consultant or Contractor.

Most [Standard Contracts](#) provide that the Contract Manager may request evidence of a Consultant's or Contractor's costs for the variation (e.g. invoices or timesheets), where that evidence is reasonably required by the Contract Manager to value the services or work in accordance with the Contract. Where such evidence is provided, the Contract Manager should properly review the evidence to confirm that the costs relate to the work the subject of the variation and are not redacted or otherwise incomplete.

VALUING VARIATIONS UNDER STANDARD BUILDING CONSULTANCY CONTRACTS

Generally, the [Standard Building Consultancy Contracts](#) provide that, unless the amount for the variation is agreed between the Contract Manager and the Consultant, the variation is to be valued by application of the rates or fees included in the Contract (which may be in the Consultant's tender submission) or, if none, reasonable rates or fees.

Reasonable rates or fees could be derived from the Consultant's evidence of costs, which may include employee hourly rates or reasonable industry rates.

If agreement cannot be reached or if the Consultant does not provide a price and/or any reasonably required evidence of costs, it may be necessary for the Contract Manager to proceed to make a reasonable assessment of the value of the Consultant's entitlement in accordance with the Contract.

VALUING VARIATIONS UNDER STANDARD BUILDING CONSTRUCTION CONTRACTS

Generally, if a variation for the Contractor's convenience is approved and directed, the Contractor will not be entitled to an adjustment to the amount/s payable under the Contract. If the variation is for other reasons, the variation must be valued and the Contractor may be entitled to an extension of time, if the variation causes the Contractor to be delayed in achieving practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management). For more information about practical completion and substantial completion, refer to the [Time](#) section.

Generally, the Contract provides for variations to be valued, in the first instance, by agreement between the Contract Manager and the Contractor following receipt by the Contract Manager of the Contractor's price for the variation. If agreement cannot be reached or if the Contractor does not provide a price and/or any reasonably required evidence of costs, it may be necessary for the Contract Manager to proceed to make a reasonable assessment of the value of the Contractor's entitlement in accordance with the Contract.

The Contract will typically specify alternative ways for the Contract Manager to value the variation, often by reference to rates or prices where they are prescribed by the Contract or included in a priced Bill of Quantities or Schedule of Rates, and where they are applicable to the work the subject of the variation and reasonable to use. In the absence of prior agreement, and where there are no applicable rates or prices to use, the Contract Manager's task is to determine a reasonable price for or value of the variation. For more information about Bills of Quantities and Schedules of Rates, refer to the [Payment](#) section.

For lump sum Contracts, a reasonable price could be ascertained by, for example:

- using the Contractor's evidence of actual costs in terms of labour and materials relative to the work the subject of the variation and adding an amount for profit and overheads determined by reference to the Contract; or

- calculating a fair market value for that work (noting that another contractor should not be approached to provide a price to ascertain a fair market value for work given that there is no intention to have that work carried out by that contractor).

When valuing additional overheads, the Contract Manager should determine whether the item was always required by the Contractor to carry out the work under the Contract or whether it was an item only required by reason of the variation, in which case the item should be valued as part of the work of the variation rather than treated as a general overhead included in pre-agreed rates under the Contract.

The following are examples of how additional overheads may be valued (unless the specific Contract provides otherwise):

- If the Contractor was directed to perform a variation which required onsite personnel in addition to the Contractor's current personnel, to arrange, coordinate or supervise the work of the variation (e.g. due to its complexity or size), those additional personnel would be a cost incurred by the Contractor to perform the work of the variation and should be included as an item in the valuation, to which the agreed percentage for profit and overheads would then be applied. However, if the work of the variation was arranged, coordinated and supervised by the Contractor's existing onsite personnel, the cost of the Contractor's onsite personnel would not be included as an item in the valuation, and the cost (if any) of additional work performed by the existing personnel would be included in the percentage for profit and overheads applied to the items of work valued and, where an extension of time had been granted and delay costs paid, the daily delay rate.
- If the Contractor was directed to perform a variation which required use of a crane that was not otherwise required to carry out the work under the Contract, the cost of the crane (inclusive of its establishment and demobilisation) would be a cost reasonably incurred to carry out the variation and should therefore be accounted for in the valuation, to which the agreed percentage for profit and overheads would then be applied. However, if the crane was being used in any event to carry out the work under the Contract and would also be used to perform the variation, only time-related costs associated with any extended duration of having the crane on site would be included in the valuation, and only to the extent that such costs were not included in any amount payable under another provision of the Contract (e.g. where an extension of time had been granted and delay costs had been paid for the delay).

The Principal may engage a Consultant with the necessary specialist expertise (i.e. a quantity surveyor) to assist with assessing and valuing variations. However, as the Contract Manager is acting as certifier in relation to the valuation of a variation, the Contract Manager must nevertheless form their own opinion.

CLAIMS

A claim is a broad term used to describe any claimed entitlement regarding any matter arising out of, or in connection with, the Contract. It may be:

- under a specific provision of the Contract (e.g. a claim for an extension of time); or
- any other matter relating to the Contract (e.g. arising out a direction by the Contract Manager, at law, in equity, under any statute or for breach of Contract).

However, it excludes a claim made under an insurance policy, a payment claim, calling on Security or a demand under the set off provisions.

Generally, the [Standard Contracts](#) contain provisions for dealing with claims and may prescribe the time within which:

- the Consultant or Contractor must submit its claim; and
- the Contract Manager is required to respond to a claim in writing.

There may also be specific, prescribed requirements for the notification, assessment and valuation of certain types of claims. Therefore, it is important to refer to the specific Contract to determine any requirements for the

Consultant's or Contractor's notification, submission and justification of the claim, and the Contract Manager's assessment, valuation and response.

Wherever possible, claims should be dealt with as close as possible to the time of the relevant events or circumstances which have given rise to the claim, and any entitlements should be granted promptly upon determination. The Contract Manager should endeavour to understand fully the basis for the claimed entitlement before making a determination, and should discuss and take all reasonable steps to resolve the claim with the Consultant or Contractor within the provisions of the Contract.

If the Contract Manager becomes aware of an event or circumstance which may give rise to a claim from a Consultant or Contractor, the Contract Manager should ensure that detailed contemporaneous records are maintained relevant to the occurrence and consequences of the event or circumstance, to support any future consideration of a claim.

Where entitlement to a claim is established, there will typically be a requirement for the Contract Manager to value the claim and agree or determine the corresponding adjustment to the fee or sum payable to the Consultant or Contractor.

It is important to read the specific provisions of the Contract to determine whether the obligation is on the Consultant or Contractor to provide to the Contract Manager a price for the respective work to be valued, or whether the obligation is on the Contract Manager to value that work regardless of the information provided by the Consultant or Contractor.

In practical terms, it is always beneficial for the Contract Manager to receive the Consultant's or Contractor's pricing before making a valuation, and most [Standard Contracts](#) provide that the Contract Manager may request evidence of the relevant costs to be valued. However, if this information is not forthcoming from the Consultant or Contractor, it may be necessary for the Contract Manager to proceed to make a reasonable assessment of the value of the Consultant's or Contractor's entitlement.

Not all cost adjustments under the [Standard Contracts](#) are variations, even if they are required to be "valued as if they were a variation". The entitlement provisions of the [Standard Contracts](#) typically prescribe the nature of costs to which the valuation provisions of the Contract are to be applied. For example, an entitlement provision of the Contract may provide for a valuation of the actual costs incurred, or it may provide for a valuation of reasonable costs, or it may require certain categories of costs to be included in, or excluded from, the valuation. Therefore, it is important that the Contract Manager maintains accurate records of, and properly accounts for, the different types of claimed entitlements under the Contract.

For more information to support the proactive management of claims, refer to the [Helpful Tips](#) section.

Importantly, in accordance with policy requirement 7 of the Building Policy Framework, departments:

- **must** seek ongoing advice from [Contract Services](#) where there is a contractual claim or dispute which concerns the interpretation of clauses in the [Standard Contracts](#), including the conditions of tender; and
- **may** seek ongoing advice from [Contract Services](#) where there is a real risk that the parties to a building construction or maintenance Contract will not be able to resolve a claim or dispute between themselves, and the claim or dispute might be referred to adjudication, mediation, expert determination, arbitration, litigation or other form of dispute resolution.

SECURITY AND SET OFF

Please note that this section does not apply to milestone payments made to the Contractor under the [Standard Contract](#) for use on modular building projects ("Modular Contract"), before the modular building is fixed on site. If further assistance is required in relation to Security and payments under the Modular Contract, please contact [Contract Services](#).

Under the [Standard Building Construction Contracts](#), Security is held by the Principal:

- as Security for performance – that is, for the purpose of ensuring the Contractor's due and proper performance under the [Standard Building Construction Contracts](#) (e.g. completing the work under the Contract and rectifying defects). Security for performance may be in the form of retention moneys or an unconditional undertaking.

- as Security for payment for unfixed plant and materials – that is, to secure payment for plant or materials that are not yet incorporated into the works on the site, where such payment is permitted and Security is required under the Contract. Security for payment for unfixed plant and materials, must be in the form of an unconditional undertaking. For more information about payment for unfixed plant and materials, refer to the [Payment](#) section.

There are certain requirements and constraints under the Contract, at common law and in legislation (refer, for example, to the QBCC Act) which govern the Principal's entitlement to hold and have recourse to Security and set off (i.e. to use Security to set off losses incurred under the Contract or any other contract between the Principal and the Contractor). Refer to the following sections for more information.

FORM OF SECURITY

Security may be in the form of retention moneys or an unconditional undertaking (e.g. a bank guarantee). Security in the form of retention moneys is comprised of amounts withheld from progress payments to the Contractor up to the value specified in the Contract, while Security in the form of an unconditional undertaking is held separate to the contract sum.

Generally, the [Standard Building Construction Contracts](#) require Security for performance to be in the form of retention moneys (also referred to as cash retention). Retention moneys are held by the Principal by progressively deducting an amount (calculated by reference to the percentage stated in the Contract) from the Contractor's progress payments until the value stated in the Contract is reached. The value of Security for performance cannot be greater than 5% of the adjusted value of the contract sum (exclusive of GST), unless specific steps are taken to satisfy legislative requirements under the QBCC Act.

However, the Contractor may request, in accordance with the specific Contract, to provide Security for performance in the form of an unconditional undertaking (e.g. a bank guarantee, in lieu of retention moneys. Contractors may prefer to provide an unconditional undertaking instead of having retention moneys deducted from progress payments, as Security in the form of an unconditional undertaking may have less impact on their cashflow.

Contractors may also request payment for unfixed plant or materials and where such payment is permitted, the Contractor may be required to secure that payment by providing additional Security in the form of an unconditional undertaking to the value of payment sought for the unfixed plant and materials.

The form of Security (other than retention moneys) required by the [Standard Building Construction Contracts](#) is an unconditional undertaking, given in an approved form by an approved financial institution or insurance company on behalf of the Contractor, to pay the Principal an amount up to the amount of the undertaking upon receipt of a written demand. The approved form of unconditional undertaking is provided in a schedule included in the [Standard Building Construction Contracts](#).

The unconditional undertaking must be given by an approved financial institution or insurance company, in accordance with the *Financial and Performance Management Standard 2019*. Deviations or changes in wording to the approved form included in the [Standard Building Construction Contracts](#) are considered departures to the [Standard Contracts](#).

Contract Managers must consult with [Contract Services](#) in relation to any proposed deviation or change in wording to the standard form of undertaking (i.e. as a departure to the [Standard Contract](#)), no matter how minor it may seem, as it may change the risk allocation approved by the Queensland Government.

Approval of a request by a Contractor to provide an unconditional undertaking in lieu of retention moneys or payment for unfixed plant and materials (where permitted by the Contract) should not be unnecessarily or unreasonably withheld. Reasonable grounds to withhold approval may be because:

- the Contractor is unable to provide an unconditional undertaking in the approved form required by the Contract (i.e. without any changes to the wording); or
- the Contractor is unable to provide an unconditional undertaking given by an approved financial institution or insurance company in accordance with the *Financial and Performance Management Standard 2019*.

Project Teams should ensure that they:

- record the physical receipt of any unconditional undertakings

- safely and securely store any unconditional undertakings
- record the release of any unconditional undertakings.

AMOUNT OF SECURITY

Regardless of whether Security for performance is in the form of retention moneys or an unconditional undertaking, the QBCC Act requires that, until the date of practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management), the amount of Security held by the Principal must not exceed 5% of the contract sum as adjusted by variations (if any) exclusive of GST, unless specific steps are taken to satisfy legislative requirements under the QBCC Act.

The provisions of the [Standard Building Construction Contracts](#) have been drafted to minimise the likelihood that the amount of Security for performance held by the Principal will exceed the QBCC Act cap of 5% of the adjusted value of the contract sum (exclusive of GST). However, Contract Managers must monitor the contract sum and take appropriate action to ensure that:

- the QBCC Act cap is not exceeded in circumstances where the contract sum is reduced (e.g. because a significant part of the work under the Contract has been omitted by variation) to an amount that is less than what was used to calculate the value of Security; or
- in circumstances where there has been a significant increase to the value of the works due to a major variation, the value of Security is increased to account for the major variation. Any requirement for additional Security resulting from a major variation should be addressed with the Contractor at the time of proposing the variation.

After practical completion (or substantial completion), the amount of Security for performance must not exceed 2.5% of the contract sum (exclusive of GST) as adjusted by variations (if any), unless specific steps are taken to satisfy legislative requirements under the QBCC Act.

Where the Contractor is required to provide Security for payment of unfixed plant or materials, that Security must be equal to the value of the plant or materials for which payment is being sought, and must be obtained by the Principal prior to making payment and released to the Contractor upon incorporation of the plant or materials into the works on the site. For more information about payment for unfixed plant or materials, refer to the [Payment](#) section.

CONVERSION OF SECURITY AND RECOURSE TO SECURITY

Conversion of Security means converting Security not in the form of money (e.g. an unconditional undertaking) into money (e.g. cash or bank cheque). The approved form of undertaking provided as a schedule to the [Standard Building Construction Contracts](#) is unconditional. This means that there are no conditions, requirements or limitations imposed on the Principal when demanding payment from the financial institution or insurance company against the form of undertaking (i.e. converting the unconditional undertaking into money). For example, the Principal does not have to prove a breach of Contract by the Contractor, give notice to the Contractor, or obtain the Contractor's consent at the time of making a demand for payment against the undertaking.

Even though the form of undertaking is unconditional, a contractual entitlement to the Security (including retention moneys) must be properly established for the Principal to rightfully have recourse to it.

Recourse to Security is different to conversion of Security. Converting Security changes an unconditional undertaking into money, whereas having recourse to Security refers to the act of using the money (whether retention moneys or the proceeds from the conversion of an unconditional undertaking). The [Standard Building Construction Contracts](#) set out the circumstances where the Principal has an entitlement to exercise its right to use Security.

Because the act of converting Security into money can have significant consequences for a Contractor, this action should not be taken without careful consideration of the rights and obligations of the parties. In accordance with policy requirement 7 of the Building Policy Framework, departments must seek advice from [Contract Services](#) where Security that is not in the form of money (e.g. a bank guarantee) is proposed to be converted to money and used.

SET OFF

The [Standard Building Construction Contracts](#) give the Principal a right to deduct from any moneys due to the Contractor any sum which is payable by the Contractor to the Principal, whether or not the Principal's right to payment arises by way of damages, debt, restitution or otherwise and whether or not the factual basis giving rise to the Principal's right to payment arises out of this Contract, any other contract, or is independent of any contract.

These provisions enable the Principal to deduct from moneys otherwise due to a Contractor under the Contract, moneys owed by the Contractor under or in respect of the same Contract or another Contract. As such, before set off rights are exercised, the entitlements of the Contractor and the Principal under the respective Contracts must first be established.

Exercising a right of set off across Contracts is complex and there will likely be significant consequences for the Contractor and the affected projects, so the exercising of this right is generally used as a last resort once all other reasonable options for recovery of the amount payable by the Contractor have been exhausted.

In accordance with policy requirement 7 of the Building Policy Framework, departments must seek advice from [Contract Services](#) where set off rights are proposed to be exercised to satisfy an amount owing under another Contract.

RELEASE OF SECURITY

Security (including retention moneys) held by the Principal for the purpose of ensuring the Contractor's due and proper performance under the [Standard Building Construction Contracts](#) must be released to the Contractor in the amounts and at the times stated in the Contract. This typically occurs at practical completion (or substantial completion in the case of trade Contracts used for project delivery by construction management) and upon final completion (or project final completion in the case of trade Contracts used for project delivery by construction management).

The amount of Security held after practical completion (or substantial completion) cannot be greater than 2.5% of the adjusted value of the contract sum (exclusive of GST), unless specific steps are taken to satisfy legislative requirements under the QBCC Act.

Where there are separable portions, it is possible that portions of the Security (for performance) must be released at different times, as the separable portions may achieve practical completion at different times. The amount of Security (for performance) to be held against each separable portion should be calculated on a pro-rata basis according to the ratio of the separable portion to the contract sum and Security.

As the time for releasing Security is underpinned by legislation, it is important to review each Contract to ensure contractual and legislative obligations are properly complied with. Except in certain circumstances (e.g. those contemplated by the QBCC Act), failure to release the Security in accordance with the Contract (i.e. on or before the day it is due to be released) is an offence under the QBCC Act.

If the Contractor does not submit a final payment claim within the time provided for in the Contract and final completion is otherwise due in accordance with the requirements of the Contract, the Contract Manager must:

- certify final completion; and
- unless there is a reason (supported by the provisions of the Contract or legislation) to retain the Security, release the Security within the time set out in the Contract (which ensures compliance with legislative requirements).

Where the Contractor has provided Security for payment of unfixed plant or materials, it must be released to the Contractor once the plant or materials have been incorporated into the works on the site. For more information about payment for unfixed plant or materials, refer to the [Payment](#) section.

PAYMENT

Payment refers to the rights and obligations of the Principal, Contract Manager, Consultant and Contractor regarding the claiming, assessment, certification and payment for the services or work under the Contract to the Consultant or Contractor under the [Standard Contracts](#).

This section sets out the fundamental concepts and principles relevant to obligations and requirements in relation to payment.

BILL OF QUANTITIES

A Bill of Quantities may be used under the single stage construct only [Standard Building Construction Contracts](#) and is typically prepared by a quantity surveyor engaged by the Principal. Under the Two Stage Managing Contractor Contract, the Contractor may be required to prepare a Bill of Quantities as part of the subcontract tender documentation.

A Bill of Quantities is a detailed list that sets out every item of material and service required for the construction of the work under the Contract (e.g. the elemental breakdown of a building). A Bill of Quantities is typically measured and documented in accordance with international and Australian standards which set out a consistent approach for measuring such items or elements. Measurable elements are quantified against standardised units of measurement, inclusive of the scope and tasks that are required to be undertaken so that the activity can be planned and subsequently priced. Some items such as preliminaries or provisional sums may simply be a single line item.

The intent of the Bill of Quantities is to facilitate the pricing of the full scope of work as detailed and documented in the drawings and specifications. A Bill of Quantities helps to improve tendering efficiency, by eliminating the need for each tenderer to generate their own quantities from the drawings and specification provided in the tender documents and reduce the tenderer's cost and risk of tendering.

The process of developing a Bill of Quantities can result in improved quality of the tender documentation because, when measuring the work, the quantity surveyor can identify and raise any discrepancies in the drawings and specification, which will need to be resolved to finalise the Bill of Quantities prior to calling for tenders (therefore resolving discrepancies which may otherwise arise, and need to be resolved, during performance of the Contract).

Where used, the Bill of Quantities must be included, without prices, in the tender documentation and the Contractor is required to price and submit the Bill of Quantities within a prescribed time after Contract award, so that the sum of the priced and extended items equals the respective sum accepted by the Principal in the Contractor's tender.

A Bill of Quantities is often referred to as being either "guaranteed" or not. However, this term is not used in the [Standard Building Construction Contracts](#). Under the [Standard Building Construction Contracts](#), a Bill of Quantities is used only to the extent provided for in the Contract, which is for the purpose of pricing the work and not to define the scope of work which is required to be carried out by the Contractor. The rectification of any errors in the Bill of Quantities may result in an adjustment to the contract sum and the Bill of Quantities may also be used to price variations.

A Bill of Quantities differs from a Schedule of Rates in that a Bill of Quantities measures the full scope of work as documented and, once priced and extended, equals the respective sum accepted by the Principal in the Contractor's tender. A Schedule of Rates is a list of work or items and the quantity of such that may be required to be performed or supplied by the Contractor to complete the scope of work required by the Contract (and is often used where there is uncertainty about the quantity of work or items needed) and the Principal's obligation is to pay in accordance with the Schedule of Rates. Provisional sums may also be used in a Bill of Quantities.

SCHEDULE OF RATES

A Schedule of Rates may be used under the [Standard Contracts](#).

A Schedule of Rates is a list of work or items and the quantity that may be required to be performed or supplied by the Contractor to complete the scope of work required by the Contract, and is often used where there is uncertainty about the quantity of work or items needed. Where used, a Schedule of Rates must be included with nominated quantities, but without rates, in the tender documentation and the Contractor is required to price and submit the Schedule of Rates with its tender.

The tender documents must describe the relevant work or items, the estimated quantity required and the unit of measurement to be applied, for which a rate will then be sought from tenderers. A clear and precise description of the full extent of all relevant work or items is important, so that there is no misunderstanding as to what work or items are included in the rate and how the work or items are to be measured.

The tendered rates will apply to the respective work or items to the extent they are required, (i.e. to the actual quantity required during performance of the Contract) and in the manner provided for by the Contract. Typically, where there is a significant variance between the estimated and actual quantities, a limit of accuracy will apply. A limit of accuracy is the allowed variance (greater or lesser) from the estimated quantity of work or items included in the Schedule of Rates and is expressed as a percentage.

For example, if a Schedule of Rates item specifies 100 linear metres of footpath (to be constructed in accordance with the details provided in the drawings and specification) and the limit of accuracy is 25%:

- the rate in the Schedule of Rates will apply to the footpath between 75 metres and 125 metres in length, (being 25% less and more than what was specified in the Schedule of Rates, respectively).
- if the required length of footpath is less than 75 meters, the rate tendered in the Schedule of Rates will not apply.
- if the required length of footpath is greater than 125 metres, the rate tendered in the Schedule of Rates will apply to the first 125 metres.

Where the tendered rates in the Schedule of Rates do not apply due to the limit of accuracy, the work or items should be valued in accordance with the Contract.

PROVISIONAL QUANTITIES

Provisional quantities may be used with a Bill of Quantities or Schedules of Rates.

Provisional quantities may be used where a quantity of work or items may need to be performed or supplied by the Contractor to complete the work under the Contract, but the work or items cannot be accurately quantified at the time of tender. Once the actual quantities are known, they will be valued in accordance with Contract using the rates or prices in the Bill of Quantities or Schedule of Rates, to the extent that they apply.

For example, where the Contractor is required to excavate trenches across the site to construct the works and the geotechnical investigations indicate the presence of rock in the substrate is likely but the type and quantity that may be encountered cannot be accurately identified or quantified, provisional quantities may be included in the tender documents for the excavation of various types of rock, and rates may be obtained for the respective work.

PROVISIONAL SUMS

Provisional sums may be used under the [Standard Building Construction Contracts](#).

A provisional sum is a mechanism that allows for the Principal, rather than the Contractor, to take the price risk for particular work or items required to be provided by the Contractor under the Contract.

Where the Principal includes a provisional sum in the tender documents, the Principal can:

- stipulate the value of the provisional sum and the Contractor is required to include that amount in its tender for the performance of the respective work or supply of the respective items; or
- for some work or items (e.g. installation works under the Standard Contract used on modular building projects), identify a provisional sum item but require the tenderer to tender back an amount for the provisional sum item.

The scope of work or items to which a provisional sum relates are included in the scope of work under the Contract (but are not performed unless directed by the Contract Manager) and therefore must be accurately and completely described in the tender documents and included in the Contractor's program. When describing the work to which a provisional sum relates in the tender documents, it is important to describe the full extent of all relevant work (consider for example, whether the provisional sum includes the cost of delivery, installation and commissioning related to the work or item). This is important to ensure that the Principal's price risk exposure is clearly understood and accurately estimated prior to tender call, and to reduce the risk of dispute with the Contractor about the extent of work or items to which the provisional sum relates.

The work or items to which a provisional sum relates are not to be performed or supplied by the Contractor until the Contractor is directed to do so by the Contract Manager, and the Contract Manager is not obliged to direct performance of the work or supply of the items. However, where the work or items are required, it is important that the Contract Manager directs the performance of the work or supply of the items the subject of the provisional sum in a timely way, particularly where the completion of other work under the Contract is contingent on the work or items to which the provisional sum relates.

Where the work or items the subject of a provisional sum are directed to be performed or supplied, the work or items are valued, and the contract sum is adjusted, in accordance with the Contract. Where work or items are required that differ from the work or items to which the provisional sum relates, as described in the tender

documents, the change cannot be directed as if it were a direction in relation to the provisional sum. Instead, a variation will be required to be directed by the Contract Manager. Contract sum adjustments for provisional sums should be distinguished from variations and other contract sum adjustments in contract management records.

UNFIXED PLANT AND MATERIALS

The provisions in relation to Security under the [Standard Contract](#) for modular buildings ("Modular Contract") differ to the Security provisions under the other [Standard Building Construction Contracts](#). As such, this section does not apply to milestone payments made to the Contractor under the Modular Contract before the modular building is fixed on site. If further assistance is required in relation to Security and payments under the Modular Contract, please contact [Contract Services](#).

Typically, under the [Standard Building Construction Contracts](#), the Principal is obliged to pay only for work or items that are fixed on the site by being incorporated into the works. However, sometimes a Contractor may seek payment for plant or materials before they have been fixed on the site and incorporated into the works.

Under the [Standard Building Construction Contracts](#), payment for unfixed plant or materials is only permitted where the Contractor has satisfied specific conditions. Depending on the Contract, this may include (among other things) a requirement for the Contractor to provide Security (usually in the approved form of unconditional undertaking to the amount to be paid for the unfixed plant or materials), which is separate and additional to any Security provided in lieu of retention moneys. The additional Security must be returned to the Contractor once the plant or materials have been incorporated into the works on site. For more information about Security, refer to the [Security and Set Off](#) section.

The [Standard Building Construction Contracts](#) impose conditions for payment of unfixed plant and material to protect the Principal against potential losses if the Contractor defaults (especially in cases of insolvency). The conditions look to minimise the:

- scope for such items becoming caught up with administrators or liquidators
- risk of a situation where the Principal has paid for unfixed plant or materials, does not receive the unfixed plant or materials and cannot recover the moneys paid due to insolvency of the Contractor
- impacts of the loss of the items due to fire, theft or other incidents that would ordinarily be a matter for the Contractor.

It is important to refer to the Contract to determine the specific conditions in relation to payment for unfixed plant or materials.

PAYMENT CLAIMS

A payment claim is the Contractor's or Consultant's written claim for payment for work or services the Contractor or Consultant has completed.

Payments and claims for payment in the construction industry are regulated by legislation. The BIF Act provides (among other things) a payment regime for the construction industry (i.e. for construction work, including related goods and services, as defined by the BIF Act).

The [Standard Contracts](#) contain terms that reflect or exceed the requirements of the BIF Act, including in relation to the:

- time when the Contractor or Consultant can submit a payment claim seeking payment from the Principal for work completed, from which the reference date under the BIF Act is calculated (generally on a monthly basis or upon completion of specific stages of work);
- delivery and content of the payment claim, including the supporting details and information required;
- time in which the Contractor's or Consultant's payment claim must be responded to and the requirements for that response; and
- time by which the Principal is to make payment to the Contractor or Consultant (if any).

Care must be taken to ensure compliance with both the Contract and legislative requirements, as a failure to do so has serious consequences under the BIF Act, including obligations to pay and an increased risk of adjudication. It is important to refer to the Roles and Responsibilities section in relation to obligations of the Contract Manager, Principal and Client Agency in respect of matters relating to payments under the [Standard Contracts](#).

From (i.e. on or after, not before) each reference date under the Contract (as defined by the BIF Act), the Contractor or Consultant is entitled to a progress payment if it has carried out construction work, or supplied related goods and services, under the Contract. Only one payment claim for each reference date under the Contract can be served.

A payment claim must be responded to properly and within time, even where:

- the payment claim is delivered to or received by an agent or employee other than the Contract Manager authorised to receive payment claims under the BIF Act and under the [Standard Contracts](#) on behalf of the Principal;
- the Contractor or Consultant fails to submit a supporting statement with its payment claim, if required under the [Standard Contracts](#) and the BIF Act, as failing to submit a supporting statement does not invalidate the payment claim;
- the Contractor or Consultant delivers a payment claim with a “draft” notation (unless it very specifically and clearly states that it is not a payment claim for the purpose of the BIF Act), as this can still be found to constitute a valid payment claim;
- there is more than one payment claim submitted for a reference date (i.e. all payment claims served should be responded to with reasons for the valuation), to avoid a situation where the payment claim is ultimately found to be valid, but no payment schedule was issued in response.

Properly responding to payment claims and issuing payment schedules is an essential function under the [Standard Contracts](#), and a common cause of disputes. The sections below set out key matters to consider to ensure that a payment claim is properly responded to. Given the strict timeframes for responding to payment claims, as outlined below, Contract Managers should also ensure that any concerns in relation to payment claims are raised and dealt with as soon as possible upon receipt.

Some of the [Standard Building Construction Contracts](#) also provide that the Contract Manager may issue a payment schedule without having received a payment claim from the Contractor.

RESPONDING TO A PAYMENT CLAIM AND ISSUING A PAYMENT SCHEDULE

Properly assessing and preparing a sufficiently detailed response to a payment claim takes time. Accordingly, Contract Managers should review payment claims as soon as possible upon receipt. In doing so, Contract Managers should also determine and note the time by which a payment schedule is due and, following that, the due date for any payment. As the time for which a payment schedule is due and the due date for payment is underpinned by legislation, and has serious consequences if missed, it is important to count days correctly. For more information on how to count days correctly, refer to the [Counting Business Days](#) section.

The BIF Act and the [Standard Contracts](#):

- set out the time by which the Contract Manager must respond to a payment claim; and
- require that, where the amount proposed to be paid to a Contractor or Consultant is different to the claimed amount, the Contract Manager must give the Contractor or Consultant a payment schedule which contains, among other things, reasons for the difference.

All payment claims must be responded to with a payment schedule within the required timeframe. The timeframe is the shorter of:

- the period determined under the Contract (which is typically 10 business days); and
- 15 business days after the payment claim is received.

Therefore, the period determined under the Contract is generally the shorter timeframe (i.e. 10 business days) and, as such, it is essential to refer to the Contract when determining the time by which a payment schedule is to be given.

If the value of the construction work, goods or services assessed as being due and payable is different to the amount in the payment claim, Contract Managers should not request that the Contractor submit a "revised" payment claim. Instead, they should respond with a payment schedule which clearly sets out the amount proposed to be paid and the reasons for the difference between that amount and the amount claimed. The practice of requesting a revised payment claim is not in accordance with the Contract nor the BIF Act, and it can expose the Principal to unnecessary risks if both payment claims are not responded to properly.

For example, if a Contractor submits a payment claim and, following a request from the Contract Manager, submits a "revised" payment claim reflective of the amount proposed to be paid, the first payment claim would likely be considered the valid payment claim for the reference date and, if not properly responded to, would result in the Principal being liable to pay the full amount claimed in the first payment claim.

When preparing a payment schedule, it is important to ensure that the payment schedule:

- is in writing;
- identifies the payment claim to which it responds;
- states how much is proposed to be paid to the Contractor or Consultant;
- gives reasons for any differences between the amounts claimed and the amounts proposed to be paid;
- clearly identifies which documents form part of the payment schedule; and
- is delivered to the Contractor or Consultant by the method stipulated in the Contract and within the required time (and that evidence of service is kept).

When preparing the reasons for any differences between the amount claimed and the amount proposed to be paid by the Principal to the Contractor or Consultant, or by the Contractor or Consultant to the Principal, it is important to:

- include sufficient, clear reasons for the differences between the claimed amounts and the amounts proposed to be paid for each item;
- ensure that the reasons are specific to the issue and item being claimed;
- include all reasons for the difference, not just the main one; and
- where referring to other documents which set out the reasons (e.g. previously issued assessments of specific variation claims included in the payment claim), make specific, accurate reference to those documents and attach them as part of the payment schedule.

It is not sufficient to:

- refer to the Contract generally;
- broadly state that there is no entitlement; or
- not pay because the claimed item has not yet been assessed.

The BIF Act provides that, if the Contractor or Consultant is dissatisfied with or disputes the amount assessed and proposed to be paid in response to the payment claim, the Contractor or Consultant may apply for adjudication under the BIF Act. Adjudication under the BIF Act is a separate and distinct process from dispute resolution under the Contract.

The BIF Act provides that, when responding to an adjudication application, the Principal cannot include any reasons (new reasons) for withholding payment that were not included in the payment schedule given to the Contractor or Consultant, limiting the Principal's ability to defend the Contractor's or Consultant's claim for additional payment. This highlights the importance of providing sufficient reasons for the difference between the amount claimed in a payment claim and the amount assessed as being due and payable in a payment schedule.

Properly assessing payment claims and preparing payment schedules, and minimising the risk of adjudication, can be assisted by:

- regularly attending site and undertaking “walk throughs” with the Contractor (or finding other ways to inspect the works if site visits are not possible) or regularly meeting with, and reviewing documents and the deliverables of, the Consultant
- proactively valuing and addressing any claims (i.e. as they arise)
- identifying or recognising issues and risks and looking for collaborative ways to promptly address them
- keeping complete and accurate records (to support reasons).

The Principal may also engage a Consultant with the necessary specialist expertise (i.e. a quantity surveyor) to assist with assessing payment claims. However, as the Contract Manager is acting as certifier in relation to the certification of payment, the Contract Manager must nevertheless form their own opinion (including by reviewing any documentation provided by a Consultant and ensuring it is accurate and complete before using or relying on it in any response to a payment claim).

For more information on inspecting the services or work under the Contract or for more helpful tips, refer to the [Quality](#) and [Helpful Tips](#) sections, respectively.

CONSEQUENCES OF FAILING TO RESPOND TO A PAYMENT CLAIM

If, under the Contract and BIF Act, a payment schedule is required to be given to the Contractor or Consultant and is not given within the time required, the Principal must pay the amount claimed in the payment claim to the Contractor or Consultant on the due date for the progress payment.

It is also an offence under the BIF Act to not give a payment schedule (if the claimed amount is not paid in full by the due date for payment) for which the Principal may be fined. There are also grounds for disciplinary action under the QBCC Act.

MAKING PAYMENT

Where no payment schedule has been given within the time required, the Principal must pay the Contractor or Consultant the amount claimed in the payment claim by no later than the due date for the progress payment, as determined under the Contract or otherwise the BIF Act.

Where a payment schedule is properly given, the Principal must pay the Contractor or Consultant the amount proposed in the payment schedule no later than the due date for the progress payment to which the payment schedule relates, as determined under the Contract or otherwise the BIF Act.

CONSEQUENCES OF FAILING TO MAKE PAYMENT

Under the Contract, if payment is not made on or before the due date:

- the Principal may be in substantial breach of the Contract
- the Contractor or Consultant may be entitled to suspend the Contract
- the Contractor or Consultant may be entitled to issue the Principal a notice to show cause
- the Contractor or Consultant may be entitled to recover damages.

Under the BIF Act, if payment is not made on or before the due date, the Contractor or Consultant may be entitled to:

- recover the unpaid amount as a debt owing in court or apply for adjudication under the BIF Act; and
- suspend the work under the Contract in accordance with the requirements of the BIF Act, without consequence.

COUNTING BUSINESS DAYS

It is important to read the provisions of the Contract in each instance to confirm the required times for responding to payment claims, including paying particular attention to the definition of business day and any holidays in the place where the works or services are being performed (but note that, generally, industry recognised RDOs are not classified as a holiday).

The timeframe for responding to payment claims is the shorter of:

- the period determined under the Contract (which is typically 10 business days); and
- 15 business days after the payment claim is received.

Further, a business day is the whole 24-hour day (i.e., not just between business hours).

When counting business days to determine when a payment schedule is due to be served or payment is due to be made, it is important to note that the day the payment claim is received is day 0 (i.e. day 1 is the business day after the payment claim is deemed to have been delivered). An example is provided in the table below.

Note that, as the timeframe for responding to payment claims under the [Standard Contracts](#) is typically 10 business days, the example below is based on a 10 business day timeframe for responding to a payment claim.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
						1
2 Payment Claim Served	3 Day 1	4 Day 2	5 Day 3	6 Day 4	7	8
9 Day 5	10 Public Holiday	11 Day 6	12 Day 7	13 Day 8	14	15
16 Day 9	17 Day 10 Payment Schedule Due	18 Day 11	19 Public Holiday	20 Day 12	21	22
23 Day 13	24 Day 14	25 Day 15	26	27	28	29

ADJUDICATION

Statutory adjudication under the BIF Act is a separate and distinct process from the contractual dispute resolution process agreed to by the parties. It is an interim measure aimed at speedy resolution of payment disputes, and facilitation of cash flow. It is not a final determination of the parties' rights under the Contract.

A Contractor or Consultant may apply for adjudication of a payment claim under the BIF Act if:

- the Principal fails to pay an amount owed (either the amount claimed in the payment claim or the amount assessed in the payment schedule, as applicable) to the Contractor or Consultant by the due date for the payment; or
- the amount stated in the payment schedule, given in response to the payment claim, is less than the amount stated in the payment claim (i.e. the Contractor or Consultant is dissatisfied with or disputes the amount proposed to be paid).

An adjudicator is to decide:

- the amount of payment, if any, to be paid by the Principal to the Contractor or Consultant or by the Contractor or Consultant to the Principal;
- the date on which any amount became or becomes payable; and
- the rate of interest payable on any amount.

The BIF Act provides that, when responding to an adjudication, the Principal cannot include any reasons (new reasons) for withholding payment that were not included in the payment schedule when given to the Contractor.

Therefore, if adequate reasons have not been provided in the payment schedule, new reasons cannot be added later for the adjudicator to consider when deciding the amount to be paid to the Contractor or Consultant. This highlights the importance of providing sufficient reasons for the difference between the claimed and assessed amount in payment schedules. Failure to adequately include all reasons in a payment schedule puts the Principal at risk of having to pay the Contractor or Consultant the full amount claimed, whether or not they are contractually entitled to it.

Adjudications are best avoided because they:

- are relatively expensive to deal with, and typically require the involvement of external lawyers, and potentially the engagement of independent expert witnesses;
- take a significant amount of the Contract Manager's time over several weeks;
- are not a final determination of the parties' rights under the Contract and therefore, do not alleviate the risk of further disputes under the Contract.

The best way to mitigate the risk of adjudication is by properly responding to payment claims within time and with sufficient detail. For more information about properly responding to payment claims within time and with sufficient detail, refer to the Responding to a [Payment Claim and Issuing a Payment Schedule](#) section.

Adjudication applications can be served in a number of ways, including in any way allowed by the Contract, or by service on the Principal's registered address or principal place of business (including the relevant site office). Therefore, it is important that all relevant addresses and contact locations are actively monitored for delivery of notices, and any notices received are promptly actioned or on-forwarded for action, as appropriate. For more information on notices, refer to the [Notices](#) section.

The BIF Act allows a short timeframe within which a Principal may prepare and issue its adjudication response, which will typically need to include legal submissions and (often) witness statements. Accordingly, in the event that an adjudication application is received, departments should contact [Contract Services](#) without delay if advice or assistance is required.

SUBCONTRACTOR'S CHARGES

The BIF Act provides a way, in certain circumstances (including for certain types of work, as that term is defined in section 105 of the BIF Act), for subcontractors (excluding Consultants) to secure payment of amounts owed to them (e.g. by a Contractor) or any Security given under a Contract by someone who is higher in the contractual chain (e.g. the Principal). This is referred to as a Subcontractor's Charge.

For example, if a subcontractor is owed money by a Contractor, under a subcontract, the subcontractor may serve a notice of claim for a Subcontractor's Charge on the Principal which then, in accordance with the BIF Act, requires

the Principal to withhold any money that is or may become payable to the Contractor, sufficient to cover the value of the amount claimed in the Subcontractor's Charge.

The Contractor may accept liability for the charge and either pay the subcontractor itself or request that the Principal pay the claim the subject of the Subcontractor's Charge from moneys otherwise due to the Contractor.

If the Contractor does not accept liability for the charge, the subcontractor is required to commence court proceedings to secure the payment.

In accordance with policy requirement 7 of the Building Policy Framework, departments must seek ongoing advice from [Contract Services](#) where a claim for a Subcontractor's Charge has been made. Accordingly, Project Teams are to notify [Contract Services](#) immediately upon receiving a notice of claim for a Subcontractor's Charge.

[Contract Services](#) engages with Crown Law in respect of the management of the Subcontractor's Charges, to provide accurate and timely advice to the Project Team in respect of the Subcontractor's Charge, including in relation to any payment claims received from the Contractor or payments required to be made into court to satisfy the Subcontractor's Charge.

While Project Teams should follow the advice of [Contract Services](#) in the particular circumstance, generally, upon receipt of a notice of claim for a Subcontractor's Charge, the Project Team should:

- arrange for the valuation of the work completed up to the date of receipt of the Subcontractor's Charge, in accordance with the Contract, to determine if there is any money payable to the Contractor at that time, to which the Subcontractor's Charge could attach; and
- if/when a payment claim is received from the Contractor, retain the value of the Subcontractor's Charge from any payment to be made to the Contractor and account for this properly in the payment schedule issued in response to the payment claim.

Even if requested, the Contract Manager or the Principal and its employees and agents should not provide advice to Contractors or subcontractors in relation to Subcontractor's Charges (or any other matter) but, instead, should suggest that they seek their own independent legal advice.

Except in the limited circumstances described above (that is, where the Contractor accepts liability for the charge, and requests that the Principal pay the claim the subject of the Subcontractor's Charge), the Principal should not pay subcontractors directly. In any case, before taking any action in respect of a Subcontractor's Charge, Project Teams should contact [Contract Services](#).

DISPUTE RESOLUTION

The [Standard Contracts](#) prescribe a dispute resolution process, which outlines the steps the parties are to take to try to resolve disputes, prior to or instead of commencing dispute resolution proceedings in accordance with the Contract. This includes requirements for submitting and assessing a claim before a notice of dispute can be served. It is important to refer to the specific Contract to understand the requirements that apply.

Under the [Standard Building Construction Contracts](#), there is opportunity for the Contract Manager to work with the Contractor to attempt to resolve the dispute before giving their decision on the dispute.

Failing resolution, or as the first step under the [Standard Building Consultancy Contracts](#), the parties (represented by their respective appropriate delegate/s with the required authority to agree to a resolution of the dispute) are required to meet to attempt to resolve the dispute or agree to methods for attempting to resolve the dispute by other means. If the dispute remains unresolved, the matter can be referred to the formal dispute resolution proceeding stipulated in the Contract (e.g. arbitration), for a third party to resolve the dispute.

Both parties are required to continue to perform their obligations under the Contract while the dispute resolution process occurs simultaneously.

Unresolved disputes often cause strained relationships and delays in concluding the work under the Contract, and formal dispute resolution proceedings such as arbitration are expensive and time consuming for both parties. Proactive contract management, including clear timely communication and collaborative problem solving between the parties reduces the likelihood of costly disputes.

In accordance with policy requirement 7 of the Building Policy Framework, departments:

- **must** seek ongoing advice from [Contract Services](#) where there is a contractual claim or dispute which concerns the interpretation of clauses in the [Standard Contracts](#), including the conditions of tender; and
- **may** seek ongoing advice from [Contract Services](#) where there is a real risk that the parties to a building construction or maintenance Contract will not be able to resolve a claim or dispute between themselves, and the claim or dispute might be referred to adjudication, mediation, expert determination, arbitration, litigation or other form of dispute resolution.

DEFAULT AND TERMINATION

Default means a substantial breach of contract where a party to the Contract does not perform or fulfil an essential obligation under the Contract. Both the Consultant or Contractor and the Principal can commit substantial breaches of, or default under, the Contract.

The [Standard Contracts](#) prescribe key obligations, which, if not met, are considered a substantial breach or default, but these are not exclusive.

The [Standard Contracts](#) prescribe the process for dealing with defaults and the rights available to the parties where the other party commits a substantial breach or is in default of its obligations under the Contract. In most instances, this includes a show cause process which offers procedural fairness to the other party, in the form of an opportunity to respond to the allegation of default, and in some cases remedy the alleged breach.

Broadly, a show cause process involves issuing a show cause notice to the defaulting party, setting out the substantial breach or default, and providing details and evidence of such breach. It also typically requires the defaulting party to explain or justify why the other party should not exercise a right available to it under the Contract as a result of its breach, within a specified period.

Typically, the rights available to the:

- Consultant or Contractor under the [Standard Contracts](#) are suspension or termination, in accordance with the terms and process required specific to the Contract (for example, some contracts require suspension to be exhausted prior to terminating the Contract).
- Principal under the [Standard Contracts](#) are termination and, in the case of [Standard Building Construction Contracts](#), take over (but it is important to read the Contract and ensure that the process prescribed by the Contract is strictly followed).

In response to a show cause notice, a Consultant or Contractor may outline why it considers it has not defaulted under, or breached, the Contract, or otherwise might outline steps intended to be taken to remedy the default. A Principal must, upon receipt of this response, consider whether or not the response is satisfactory and what steps to take next, and document the reasons for the decision.

Upon entering into a Contract, it is expected that the Consultant or Contractor and the Principal will fulfil their obligations and complete the Contract. Termination of contracts is disruptive to a project and the industry more broadly, and therefore, provisions which permit the Principal to terminate the Contract for convenience or without cause are very limited across the suite of [Standard Contracts](#), and in all cases, they provide for payment to the Consultant or Contractor. If either the Consultant or Contractor, or the Principal, indicates that they are unwilling or unable to proceed with or perform the Contract, such conduct could be considered repudiatory, giving the other party a right to terminate the Contract.

In accordance with policy requirement 7 of the Building Policy Framework, departments must seek ongoing advice from [Contract Services](#) where:

- there has been a substantial breach of Contract which may lead to termination or take-over of the Contract. [Contract Services](#) is also available to assist where a Principal is contemplating termination of the Contract for reasons other than substantial breach
- Security that is not in the form of money (e.g. a bank guarantee) is proposed to be converted to money and used or where set off rights are proposed to be exercised to satisfy an amount owing under

another Contract. For further information on conversion of, and recourse to, Security and set off, refer to the [Conversion of Security and Recourse to Security](#) and [Set Off](#) sections.

If the Contract is terminated, the contractual relationship between the parties comes to an end along with the requirement for the parties to fulfil their obligations under the Contract. This usually means that the Consultant or Contractor stops performing the services or work under the Contract. However, care needs to be taken to ensure compliance with clauses that survive termination and legislation, such as the BIF Act which provides for a final reference date for a payment claim, being the date upon which the Contract is terminated.

If the services or work under the Contract have not been completed, the finalisation of the services or the completion of the works will likely be significantly delayed, because of the time it takes to properly terminate a Contract and then prepare suitable tender documentation, tender and engage another Consultant or Contractor to complete the remaining services or work under the Contract. The cost to complete the remaining services or work under a Contract which has been terminated or taken over may also exceed the amount remaining to be paid to the original Consultant or Contractor.

Typically, until the Contract is properly terminated, the Principal cannot re-tender or approach the market in relation to the outstanding services or work under the Contract (if any). It is important that no such re-tendering (or conduct which is consistent with an intention to no longer be bound by the Contract) occurs prior to proper termination of the Contract, as such conduct could be considered repudiatory.

Take-over (a right of the Principal under the [Standard Building Construction Contracts](#)) differs from termination of the Contract, in that the Contract is not terminated (i.e. it remains on foot), but the Principal can have the work under the Contract (or part thereof) completed by others.

Exercising a right to terminate or take over a Contract should not be undertaken routinely or lightly. There are very particular and circumstance specific legal and contractual considerations and risks that must be contemplated when looking to terminate or take over the services or work under a Contract (including circumstances where a party has repudiated the Contract).

Where there has been a substantial breach of Contract which may lead to termination or take-over of the Contract, it is important that Project Teams consult with [Contract Services](#) in accordance with policy requirement 7 of the Building Policy Framework, at the earliest possible opportunity to avoid taking or failing to take any action that may put the Principal in a compromised position.

INSOLVENCY

A person or company is considered insolvent when they cannot pay all debts when they are due for payment. The [Standard Contracts](#) typically define what constitutes an insolvency event under the Contract.

Common procedures for an insolvent company include (among others):

- liquidation;
- voluntary administration; and
- the small business restructuring process.

The process and the Principal's rights in respect of an insolvent Consultant or Contractor differ depending on the circumstances (including insolvency type and project specific circumstances) and, as such, require different considerations. For example, the *Corporations Act 2001* (Cth) provides for the "ipso facto stay", which limits actions that may be taken during certain insolvency events and otherwise specifies when particular actions may be taken. There are consequences for taking prohibited action during the relevant stay period, including for any unlawful termination during this period.

In accordance with policy requirement 7 of the Building Policy Framework, departments must seek ongoing advice from [Contract Services](#) about the substantive issues, management and finalisation of any matter concerning a Queensland Government building construction project or maintenance program, where a contracted building construction or maintenance Consultant or Contractor has become insolvent.

Project Teams are to notify [Contract Services](#) immediately upon receiving any information relating to the insolvency (or suspected insolvency) of a building construction Consultant or Contractor who has Contracts with the State of Queensland.

While Project Teams should follow the advice of [Contract Services](#) in the particular circumstance, generally, upon notification of an insolvency affecting a Queensland Government building construction Contract, the Project Team should:

- in the case of liquidation only, secure the site;
- arrange for a valuation of the work completed up to the date of the default (insolvency) in accordance with the Contract, noting that the value of any unfixed materials on site should not be included in the value of work complete but may be valued separately; and
- make and maintain a log of the materials and equipment on site, noting the ownership of those materials.

HELPFUL TIPS

Best practice tips are included throughout the Contract Fundamentals, within the respective section to which the tip relates. This section provides general helpful tips for contract management under the [Standard Contracts](#).

READ THE CONTRACT

It is important that Project Teams read and understand all the documents and information comprising the Contract for the specific project they are delivering. Such documents and information include, among other things:

- the Conditions of Contract for the particular project (including both the general conditions and special conditions, if any)
- the documents which form part of the Contract, which may include terms of reference, project briefs, drawings, specifications and scopes of work
- the Consultant's or Contractor's complete tender submission, as accepted
- the program for the services or work under the Contract
- important milestones and other contract deliverables and obligations under the Contract
- the time for performance of the Principal's and the Contract Manager's obligations, including the time for delivering written responses, giving directions and making payments.

BE PROACTIVE

Project Teams should ensure projects and Contracts are proactively, collaboratively and effectively managed. Some key actions include:

- understanding the responsibilities of each role as it relates to the delivery of the project in accordance with the Contract
- actively managing the Contract in accordance with its terms, and being conscious of the rights and obligations of both the Consultant or Contractor and the Principal under the Contract (don't just look to or use the Contract when there is a problem)
- regularly inspecting the services or work under the Contract (including visiting the site)
- identifying or recognising issues and risks and looking for collaborative ways to promptly address them
- making accurate and timely progress payments to maintain the Consultant's or Contractor's cashflow
- properly assessing claims and granting entitlements promptly
- regularly updating project cost records and reconciling overall project accounting
- ensuring open and timely communication with all stakeholders

- ensuring there are sufficient, capable resources dedicated to the project, at all stages of the project
- identifying and managing any relationship difficulties early.

KEEP COMPLETE, REGULAR AND THOROUGH RECORDS

Record keeping is a crucial aspect in effectively managing not only the Contract itself but also in managing contractual matters and resolving disputes. Accurate and comprehensive records serve as crucial evidence to support claims, establish timelines, and demonstrate compliance (or otherwise) with contractual obligations. Accordingly, Project Teams should maintain records such as:

- site diaries and photos – record progress and observations of what is (or isn't) occurring on site during site visits, noting who is on site during each site visit and where work is being performed
- meeting minutes – record what was discussed and/or agreed during any meetings with the Consultant or Contractor and get agreement as to the accuracy of the record
- registers of matters such as variations, design directions, claims, extensions of time, payments, requests for information – accurately document the subject of the matter, the status and the assessment or decision
- registers which distinguish and record separate fee or cost adjustments under the Contract based on the discrete basis for entitlement – do not record all fee or cost adjustments simply as “variations” regardless of the basis for entitlement (including provisional sum and bill of quantities reconciliation)
- all correspondence issued and received in relation to the Contract.

It is also important to ensure that such records include sufficient detail to make them meaningful. For example, records should include:

- the date and time the relevant event, matter or communication occurred
- the parties involved in the event, matter or communication
- specific details of the event or matter, including photos where possible and appropriate
- any other relevant supporting documents.

Recording information in a timely manner (i.e. as matters occur) and regularly updating records and registers help to ensure that the accuracy of the information is maintained and reduces the risk of information loss or distortion.

Establishing a structured filing system for records, including clear file naming conventions (which include the date of the document or correspondence) and enable sorting in chronological order, is particularly beneficial when keeping the above records, so that each document or file is easily identifiable if it is required at a later date. The clearer the filing and naming convention structure, the quicker it is to locate information and resolve matters.

Upon a person's departure, it is important that all project records created or maintained by that person are retained and available (including those on a proprietary document management system). It is not uncommon for a matter to proceed to dispute many years after a project achieves completion. In such cases, the personnel who worked on the project have often moved on, are uncontactable, or otherwise have limited memory of the matters the subject of the dispute. In those cases, accurate records are often crucial to successfully resolve the matter.

It is also important to review the records governance policy and any department specific procedures to ensure records are kept correctly and for the appropriate length of time.

WHERE TO GET HELP

[Contract Services](#) is a unit within Major Projects, Public Works which performs a whole of government role in advising on contractual matters relating to the procurement and delivery of Queensland Government building construction and maintenance projects and programs in accordance with the Building Policy Framework.

The Queensland Government's building construction and maintenance [Standard Contracts](#) and guidance from [Contract Services](#) on choosing a procurement strategy can be found at [ForGov](#).

[Contract Services](#) can be contacted at Contract.Services@epw.qld.gov.au.