

Contract Administration System Manual: Procedure – CAP007M

Claims and Variations

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1 Claims and Variations

1.1 Purpose

This procedure is to maintain consistency and compliance in executing the Administrator's functions under the Contract. The Administrator certifies all claims and variations under the Contract.

This procedure provides some guidance as to the administration of the following types of claims and variations:

- Claims and notices for:
 - Payment under Clause 42 *Certificates and payments*
 - Extensions of Time for Practical Completion under Clause 35.5 *Extension of time for Practical Completion*, and
 - Substantial Breach of Contract Clause 44.2 *Default by the Contractor*.
- Variations under Clause 40 *Variations*, and
- Latent Conditions (as a particular case of a variation) under Clause 12 *Site conditions*.

Each component of a claim is addressed starting with the notice of a claim, particulars, timing (any time bars) and assessment. Latent Conditions and breach of contract will also be briefly discussed.

All clauses within this document refer to the *Transport Infrastructure Contract (TIC) - General Conditions of Contract (GCoC)* unless noted otherwise.

1.2 Scope

The scope of this procedure is to provide guidance for the Administrator to receive, acknowledge, assess, negotiate, determine and certify claims from the Contractor, and notify the Contractor as to any valuation or determination and particularly to meet any time restrictions.

The scope also includes the processes for the Administrator to direct a variation without a claim being received from the Contractor and as initiated from the Principal and agreed by the Administrator (Clause 40 *Variations*).

1.3 Definitions, Abbreviations and Acronyms

Abbreviation	Description
Administrator	The person appointed as the Administrator by the Principal.
Contractor	The person identified as the Contractor in the contract.
EOT	Extension of Time.
GCoC	General Conditions of Contract – (TIC).
PM	Project Manager – appointed by the Principal to manage the overall project of which the TIC may be one of a number of separate contracts under the project.
Practical Completion	That stage in the execution of the work under the Contract where the Works are able to be handed over to the Principal. Refer full definition in TIC GCoC.
Principal	The Principal stated in the Annexure (State of Queensland acting through the Department).
Payment Claim	A claim for payment by the Contractor.

Abbreviation	Description
TIC	Transport Infrastructure Contract.
VO	Variation Orders.

2 Claims and Notices

2.1 General

The notice of claim for payment, variations, Latent Conditions and breach of contract initiate the actions which follow. All such claims must have a contractual basis and it is good practice for such claims to identify the relevant clause under the Contract upon which it is submitted. As such, the notice must comply with the requirements of the Contract. A failure to comply may mean the claim may be rejected.

A claim refers to any claim proposed by the Contractor or given under or in relation to the Contract.

There are several types of claims, including:

1. Claims for payment – a Contractor’s monthly payment claim, Clause 42 *Certificates and Payments*. Refer to *Payment Claims and Certificates* (CAP009M)
2. Claims for variations – a claim resulting from a change in the scope of work or change in quantities outside the limit of accuracy that may result in a change in work procedures, Clause 40 Variations
3. Claims for Extension of Time for Practical Completion – claims under the Clause 35.5 *Extension of Time for Practical Completion*. Refer to *Extension of Time for Practical Completion* (CAP008M)
4. Claims for Latent Conditions – claims under Clause 12 *Site conditions*, and
5. Claims for breach of contract or other reasons– a claim resulting from a breach of any contract provision under Clause 46 *Time for notification of claims and disputing Administrator’s directions*.

Any notice of dispute under Clause 47 *Dispute Resolution* needs special attention and shall be referred to the Administrator in all circumstances.

A notice of breach of contract under Clause 44 *Default or Insolvency* is generally regarded as a failure of one party to fulfil obligation or keep a promise which is contained in the Contract. A substantial breach of contract can lead to a termination of the Contract and possible lengthy and costly disputation. Please contact the Director (Prequalification & Contracts) for specialist advice where required on this matter.

2.2 Referenced clauses of General Conditions of Contract - Notices

- Clause 7 *Service of Notices* provides information on what constitutes a notice and how a notice should be served.
- Clause 12 *Site conditions* provides information on Latent Conditions
- Clause 42 *Certificates and Payments* provides the basis for monthly progress payment to the Contractor as a result of an assessed progress payment claim.

- Clause 46 *Time for Notification of Claims and Disputing Administrator's Directions* sets the mechanics for submitting a claim within the general time limit of 20 business days for lodging.
- Clauses 44.2 *Default by the Contractor* refers to substantial breaches of the Contract by the Contractor and Clauses 44.7 *Default of the Principal* refers to a substantial breach of Contract by the Principal.
- Clause 47.1 *Notice of Dispute* refers to a dispute arising between the Contractor and Principal out of or in connection with the Contract, including a dispute concerning a direction given by the Administrator, then either party shall deliver the notice of dispute to the other party and the Administrator.

2.3 Actions and Responsibilities

2.3.1 The Contractor

The Contractor should at all times apply principles of good relationship management and immediately consult with the Administrator about any situation which may lead to a potential claim.

The Principal shall not be liable for any other claim by the Contractor unless the Contractor has given, within 20 business days after the first day upon which the Contractor could reasonably have been aware of the situation, to the Administrator a prescribed notice under Clause 46.1 *Contractor's Prescribed Notice*. The notice must be endorsed as "*Prescribed Notice under Clause 46.1*" and contain all of the required particulars.

The Contractor should give to the Administrator a prescribed notice under Clause 46.1 *Contractor's Prescribed Notice* if it is to avoid the liability bar of Clause 46.1 *Contractor's Prescribed Notice*.

The Contractor is to receive a determination notice in writing endorsed "*Administrator's Notice under Clause 46.2*" from the Administrator.

The Contractor has 20 business days from the receipt of the Administrator's notice to give a further notice of dispute in accordance with Clause 47.1 *Notice of Dispute*; otherwise the determination of the Administrator will be final and binding upon the parties and not subject to dispute notwithstanding Clause 47 *Dispute Resolution*.

The Contractor is to comply at all times with any other notice or contract provisions irrespective of giving a prescribed notice under Clause 46.1 *Contractor's Prescribed Notice* or receiving the Administrator's determination under the Clause 46.2 *Time for Disputing Administrator's Decision*. This means the Contractor cannot stop work because there is a dispute with the Principal or the Administrator.

2.3.2 The Administrator

The Administrator shall maintain a position to be able to identify any situation which may lead to a potential claim. This is the result of good surveillance and monitoring by the field staff and good partnering processes being implemented with the Contractor.

The Administrator shall use *Claims Analysis Worksheet* (CAF025M) to analyse situations for potential claims, to determine the potential claim type and to follow a relevant procedure.

The Administrator shall complete details of any situation which may lead to a claim including confirmation and details of any aspect that the Contractor should have been reasonably aware.

The Administrator shall discuss and/or negotiate, as required, with the Contractor and the Principal so as to determine the best possible outcome to address the situation which may lead to a claim or potential claim.

The Administrator upon receiving a claim from the Contractor under Clause 46.1 *Contractor's Prescribed Notice* shall confirm that the claim meets the requirements of the clause.

- Is endorsed "*Prescribed Notice under Clause 46.1*"
- Is given within 20 business days after the first day upon which the Contractor could reasonably have been aware of the situation
- Does not fit under an exempt category (Clause 46.1(d)(i) to (iv)), and
- Includes all the required particulars.

The Administrator shall analyse the claim using the *Claims Analysis Worksheet* (CAF025M).

The Administrator's prescribed notice given under Clause 46.2 *Time for Disputing Administrator's Decision* shall:

- Be in writing and endorsed "Administrator's Notice under Clause 46.2"
- Be given to the Principal and the Contractor
- Identify the certificate, valuation or determination to which it relates, and
- State that the certificate, valuation or determination will be final and binding upon the parties and not subject to dispute unless either party, within 20 business days after receiving the Administrator's notice, gives a notice of dispute in accordance with Clause 47.1 *Notice of Dispute* disputing the certificate, valuation or determination.

2.3.3 The Principal

- The Principal shall be liable for any claim which satisfies requirements of the Clause 46.1 *Contractor's Prescribed Notice*.
- The Principal shall receive a prescribed notice from the Administrator under Clause 46.2 *Time for Disputing Administrator's Decision*.
- The Principal shall be liable for the Administrator's decisions given under the Clause 46.2 *Time for Disputing Administrator's Decision* unless the Principal, within 20 business days after receiving the Administrator's notice, gives a notice of dispute according to the Clause 47.1 *Notice of Dispute*.

It is important to note that a decision by the Administrator under the Contract is a separate issue to the costs which the decision may cause. This is because the Administrator must remain neutral when making decisions under the Contract. The costs are an issue for the Principal to address. The Administrator also has a duty to the Principal under the Contract to keep the Principal informed, through the Project Manager, of the estimated costs of any Variation Order likely to be issued by the Administrator. The Principal has the right under the Contract to mitigate cost overruns and may choose, to amend the design and negotiate an outcome with the Contractor to minimise the contract costs.

3 Variations

3.1 General

A variation under the Contract may include a change to the scope of works, materials, design, additional work or removal of work no longer required. Proposed variations are evaluated and if accepted by the Administrator, their impact on the Contract is defined, quantified, priced and the determination notified to the Contractor and the Principal.

The Contract binds the Contractor to execute variations as directed by the Administrator if the variation is within the scope of the Contract. Works outside the Contract may occur but the agreement of the Principal and the Contractor to carry out the works is first required.

The Contractor can be entitled to be compensated for costs for preparing the details of a variation under some circumstances (Clause 40.2 (b) *Contractor's obligations concerning proposed variations*).

In the event that a process was not agreed with the Contractor at the pre-start conference, the Administrator should negotiate with the Contractor and Principal to jointly agree, without prejudice to either party, the quantum (time for plant and labour and quantities of materials potentially involved) of a proposed variation. This should be agreed to before commencement of the variation so as to avoid arguments later on. Should a variation be directed to be undertaken before agreement is reached (due to a requirement to undertake before a certain date) then accurate records should be taken of all activities in regards to the variation.

3.2 Referenced clauses of General Conditions of Contract - Variations

The actions defined in this procedure are dictated by the relevant clauses of the Contract.

Clause 7 *Service of Notices* provides information on what constitutes a notice and how a notice should be served.

Clause 40 *Variations* sets out procedures and responsibilities on how to deal with and value variations under the Contract.

Several other clauses of the Contract provide for the Administrator to issue or direct a variation or value additional work in relation to Clause 40 *Variations* including:

- Under Clause 8.2 *Discrepancies* resulting from the Administrator's interpretation to be followed in the case of any discrepancy between documents
- Under Clause 14.1 *Complying with Legislative Requirements* resulting from compliance with Legislative Requirements (changes to legislation, not existing as at the time of first calling for tenders)
- Under Clause 14.2 *Changes in Legislative Requirements* resulting from a change in Legislative Requirement after the 10th business day prior to the closing of Tenders causes the Contractor to incur more or less cost than could have reasonably have been anticipated by a competent and experienced Contractor
- Under Clause 16.3 *Reinstatement* for rectification of losses or damage caused by an excepted risk as defined under Clause 16.4 *Excepted Risks*
- Under Clause 27.5 *Finding of minerals, fossils and relics* for preserving any item of antiquity or of anthropological or archaeological interest

- Under Clause 27.7.1 *Responsibilities* (sub-clause to 27.7 Public Utility Plant) for coordinating of the relocation and/or replacement of Public Utility Plant
- Under Clause 27.7.2 *Public Utility Plant* for Public Utility Plant identified during the Contract additional to that stated in the Contractor's Tender
- Under Clause 28.2 *Care of survey marks* for the reinstatement of disturbed survey marks caused by other than the Contractor
- Under Clause 28.5 *Errors in Setting Out* for the Contractor's cost of rectifying an error caused by incorrect survey marks provided by the Administrator
- Under Clause 30.7 *Variations due to Defective Materials or Work*, for change in value to the Principal of the works caused by the removal, demolition, reconstruction, replacement or correction of defective materials or work
- Under Clause 31.7 (paragraph 6) *Costs of testing*, cost to the Contractor resulting from the Administrator's direction to test material or Work Under the Contract, or
- Under Clause 33.1(f) *Rate of progress* resulting from the Administrator directing the order and at what time the various stages or parts of the Work Under the Contract shall be performed.
- Under Clause 33.5(e) and (f) *Acceleration* resulting from the Administrator's direction to accelerate the performance of the Work Under the Contract
- Under Clause 34.4 *Cost of suspension* due to any costs incurred as a result of suspension directed by the Administrator under Clause 34 *Suspension of the Works*
- Under Clause 35.5 *Extension of Time for Practical Completion*, for Extension of Time for Practical Completion caused by an act of omission of the Principal.
- Under Clause 36 *Delay costs* – where an extension of time has been granted to the Contractor.

Clause 47 *Dispute Resolution* relates to disputes notified by either the Principal or the Contractor, including directions given by the Administrator.

Clause 41 *Dayworks* details the requirements when quantities greater than the order of accuracy are exceeded (Clause 3.2 *Payment on Schedule of Rates Basis*) or variations are ordered as Dayworks.

3.3 Actions and Responsibilities

The timely treatment of variations is important. The time periods for responses by the Administrator and the Contractor are a critical part of effective management of variations.

It is particularly important for the Administrator to be prompt in their responsibilities remembering that sometimes a perfect decision made late is less effective than one made in time but not with complete knowledge. Late decisions inevitably lead to further claims for time and/or costs and delay (Clause 36 *Delay Costs*). There may be an opportunity to make changes and adjustments later, after further information becomes available.

Where the variation results in an Extension of Time for Practical Completion the Contractor must be encouraged to provide a response at the same time as the costs are derived.

Where there is a time component to a cost variation, it is highly advantageous to resolve these at the same time to minimise the potential for further claims.

The Administrator and the Contractor should resolve to settle outstanding variations throughout the Contract whilst the details are fresh in both parties' minds rather than at the end of the Contract. It is recommended that variations (including Extensions of Time for Practical Completion) should be discussed at claim specific meetings to focus attention on the purpose of the meeting. The progress or blockages should be reported at the monthly conferences for which the minutes are circulated through the Project Manager to the Principal.

3.3.1 The Contractor

The Contractor shall not vary the work under the Contract except as directed by the Administrator or approved in writing by the Administrator under Clause 40 *Variations*.

The Contractor may request the Administrator to approve a variation for the convenience of the Contractor. Such approval is at the Administrator's discretion and may be conditional. In assessing such an application, the Administrator needs to be aware of the Principal's rights under the Contract and the consequences of who should benefit from the savings from such a variation.

The Contractor shall receive a notice in writing from the Administrator advising the Contractor of a proposed variation under Clause 40 *Variations*. This relates to a variation proposed by the Principal.

The Contractor, if directed by the Administrator under Clause 41 *Daywork* is required to carry out variation works and receive payment as Daywork, after the work is complete.

The Contractor shall evaluate the proposed variation and advise the Administrator in writing if the proposed variation can be effected; and

- advise the anticipated effect of the variation on the construction program and time for Practical Completion, and
- provide an estimate of costs (including delay costs, if any) of the proposed variation.

The Contractor shall provide, if specified and directed by the Administrator, further detailed quotation for the variation within a requested time frame.

The Contractor shall negotiate in good faith and without delay to arrive at an agreement on the scope of variation, its effects on construction program and time and estimated costs of the proposed variations otherwise a valuation shall be made under Clause 40.5 *Valuation*.

The Contractor upon receiving a valuation from the Administrator, for the proposed variation works under Clause 40.5 and supported by the notice under Clause 46.2 *Time for Disputing Administrator's Decisions*, shall decide within 20 business days after receiving the Administrator's notice to:

- Accept the Administrator's valuation, or
- Reject the Administrator's valuation and to give a notice of dispute in accordance with Clause 47.1 *Notice of Dispute* disputing the valuation.

The Contractor shall include costs of preparing the valuation and estimate of the proposed variation and the cost of executed variation works in the next monthly payment claim.

The Administrator may issue any direction that was not expressly acknowledged to be a variation under Clause 40, but which the Contractor claims is a variation under that Clause 40. The basis for these claims can be any one of the clauses listed in Section 3.2 above. If the direction appears to constitute a breach of contract, the Contractor, within 20 business days after the first day upon which the Contractor could be reasonably aware of the breach shall issue a prescribed notice under Clause 46.1 *Contractor's Prescribed Notice* to the Administrator. The notice must comply with the requirements of Clause 46.1(b)(c)(d)(i) to (iv) for it to be valid.

3.3.2 The Administrator

The Administrator shall receive the Principal's details of a proposed variation and a direction in writing to proceed with implementation of the variation.

The Administrator shall determine a need for a variation, to define variation scope and to issue a notice in writing advising the Contractor of a proposed variation under Clause 40 *Variations*. The Administrator will request the Contractor to provide details on the effects of the proposed variations on the construction program and timing and a cost estimate required to be provided by the Contractor and timing for the Contractor's reply.

The Administrator, upon receiving a request from the Contractor for a variation, shall determine if the proposed variation constitutes a breach of contract and if it complies with Clause 46.1 *Contractor's Prescribed Notice*.

The Administrator, upon receiving a request from the Contractor for a variation, shall determine if the proposed variation is for the Contractor's convenience, and if so, to make a determination under Clause 40.4 *Variations for the Convenience of the Contractor*, otherwise make a determination under Clause 40.1 *Authority* to vary the work.

The Administrator may decide that the variations directed under Clause 40.1 *Authority* to vary the work, are carried out and paid as Daywork under Clause 41 *Daywork*.

The Administrator should register the variation in the Variation Register (CAF026M).

When the Administrator receives the Contractor's prescribed notice under Clause 46.1 *Contractor's Prescribed Notice* alleging that the proposed variation is a breach of contract, they shall first establish if the notice was served within 20 business days after the first day the Contractor could reasonably have been aware of the breach and immediately consider re-evaluating the proposed variation and re-negotiating with the Contractor, whatever the case might be.

The Administrator shall receive advice from the Contractor:

- If the proposed variation can be effected:
 - Of the anticipated effect of the variation on construction program and time for Practical Completion; and
 - Of the estimate of costs (including delay costs, if any) of the proposed variation.

The Administrator, if in agreement with the details and estimate provided by the Contractor, shall issue an acceptance notice in writing to the Contractor and the Principal and to direct the Contractor to execute variation works. Otherwise the Administrator may request the Contractor to provide a detailed quotation for the work of a variation supported by measurements or other evidence of cost.

The Administrator, in case no agreement on price for the proposed valuation is reached between the Contractor and the Administrator, shall value the proposed variation and issue a valuation notice to the Contractor and the Principal under Clause 40.5 *Valuation* and to consider endorsing such notice as a notice under Clause 46.2 *Time for Disputing Administrator's Decision*.

The Administrator, upon the agreement on the valuation of the proposed variation or upon issuing a valuation under Clause 40.5 *Valuation*, shall direct the Contractor to proceed with the variation works as agreed and specified.

The Administrator shall ensure that the costing details of the approved and executed variation works are included on the Contractor's monthly payment claim.

The Administrator should include the details approved and executed variation works on the following contract administration forms:

- *Payment Certificate* (Form C7880)
- *Payment Schedule Summary* (Form C7883)
- *Rise and Fall Summary* (Form C7884)
- *Summary of Directed Variations of Scheduled Items (Excluding Daywork)* (Form C7887A)
- *Summary of Directed Variations on Non-Scheduled Items (Excluding Daywork)* (Form C7887B)
- *Summary of Claims (Excluding Daywork)* (Form C7889).

3.3.3 Principal

The Principal shall provide the Administrator with the details of any proposed variations and request the Administrator to proceed with the implementation of the proposed variation.

The Principal shall receive the details of the proposed variation from the Administrator and approve or disapprove the proposed variation.

The Principal shall pay the costs of approved and executed variation works as certified by the Administrator and invoiced by the Contractor.

4 Latent Conditions

4.1 General

Latent Conditions are physical conditions of the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially and substantially:

- a) from the physical conditions specified in the Reliance Information at a specific location at the Site, or
- b) from the physical conditions which should reasonably have been anticipated by a competent and experienced Contractor at the time of the Contractor's tender if such a Contractor had:
 - i. Examined all information made available in writing by the Principal to the Contractor for the purpose of tendering
 - ii. Examined all information relevant to the risks, contingencies and other circumstances, having an effect on the Tender and obtainable by the making of reasonable inquiries, and

- iii. Inspected the Site and its surroundings; but do not include any conditions described in TIC Annexure A (C7831.CO) Item 3A.

4.2 Referenced clauses of General Conditions of Contract – Latent Conditions

Clause 7 *Service of Notices* provides information on what constitutes a notice and how a notice should be served.

Clause 12 *Site Conditions* refers to:

- What constitutes a latent condition
- Sets requirements for the Contractor on how to address a latent condition encountered, and
- Provides for an Extension of Time for Practical Completion and compensation for extra cost in case a Latent Condition is encountered and proven to be a Latent Condition.

Clause 35.5 *Extension of time for Practical Completion*.

Clause 40.5 *Valuation*.

4.3 Actions and Responsibilities

4.3.1 Preliminary

Latent Conditions can be one of the most difficult types of variation to deal with, as the Contractor and the Administrator can often 'lock' themselves into their respective positions.

Proactive contract administration through a cooperative partnering approach can often lead to defining matters agreed by both parties, matters which are subject to agreement and matters which cannot be agreed. Reference to other specialists such as engineering geologists and experienced engineering staff external to the Contract may bring another perspective to the claim to allow the issues to be negotiated and resolved.

4.3.2 The Contractor

The Contractor should at all times apply principles of good relationship management and immediately consult with the Administrator any situation which may lead to a potential claim.

The Contractor is to verify that at the time of tender they had:

- Examined all information made available in writing by the Principal to the Contractor for the purpose of tendering
- Examined all information relevant to the risks, contingencies and other circumstances, having effect on the tender and obtainable by the making of reasonable inquiries, and
- Inspected and investigated the Site and its surroundings.

If the Contractor becomes aware of a Latent Condition, the Contractor must not disturb the Latent Condition any further and give, without a delay, a written notice to the Administrator endorsed "*Contractor's Notice* under Clause 12.2".

The Contractor, if requested by the Administrator, must provide in writing the following information to the Administrator:

- The Latent Condition encountered and in what aspects it differs materially from physical conditions which should reasonably have been anticipated

- The additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition
- The time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion
- The Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition, and
- Other details reasonably required by the Administrator which may include:
 - Exact day, time and circumstances the Latent Condition was encountered, and
 - Date by which information needs to be provided.

The Contractor may give a claim for the Extension of Time for Practical Completion caused by the Latent Condition according to Clause 35.5 *Extension of Time for Practical Completion*.

The Contractor may give a claim for extra costs caused by the Latent Condition and valued according to Clause 40.5 *Valuation*.

The Contractor cannot claim any additional costs related to the Latent Condition if the related expense occurred more than 10 business days before the date on which the Contractor gives the written notice under Clause 12.2 *Notification*.

4.3.3 The Administrator

The Administrator is to maintain a position to be able to identify any situation which may lead to a potential claim, Latent Condition or otherwise, from the Contractor.

The Administrator receives the latent condition claim in writing from the Contractor endorsed "Contractor's Notice under Clause 12.2".

The Administrator informs and seeks clarification on the claim with the Principal only on the basis of confirming evidence and matters relating to the claim.

The Administrator analyses the claim and determines if:

- The claim is duly endorsed and satisfies the Contract notice requirements
- The Latent Condition referred to in the claim is a valid one, and
- The claim contains all the information to allow the Administrator to understand the claim and to allow assessment.

The Administrator may ask the Contractor in writing to provide additional specific information in relation to the claim and within a specific time.

The Administrator assesses all available and requested information to determine whether the Contractor could reasonably have been aware or should be expected to have been aware about the Latent Condition at the time of tendering.

The Administrator assesses all available and requested information to determine whether the Principal should have been reasonably aware about the condition and should have been expected to provide the relevant information to the Contractor in the tender documentation.

The Administrator makes a determination about the Contractor's claim for the Latent Condition and advises the Contractor in writing about the Administrator's determination.

The Administrator provides a copy of the Administrator's determination to the Principal.

The Administrator gives notice under Clause 46.2 *Time for Disputing Administrator's Decisions* together with the Administrator's determination of the Contractor's claim for the Latent Condition.

The Administrator assesses the Contractor's claim for an Extension of Time for Practical Completion and additional expenses. Refer to *Extension of Time for Practical Completion* (CAP008M).

4.3.4 Principal

The Principal should provide any information requested by the Administrator to allow the assessment of the claim to proceed.

The Principal receives a copy of the Administrator's determination.

The Principal reviews the determination to decide whether there is agreement with the outcome or whether the Principal should appeal the determination. If an appeal is made, then the Principal disputes the determination under Clause 47 *Dispute Resolution*.

The Principal pays the Contractor the additional costs resulting from the Latent Condition as determined by the Administrator.

5 Breach of Contract

5.1 Scope

Breach of contract clauses are referred to Clause 44 *Default or Insolvency* and in general there is a requirement for either the Principal or the Contractor to "show cause".

The Principal should always seek advice from Prequalification and Contracts Unit (PCU) in such circumstances of contemplating issuing such a "show cause" notice upon the Contractor.

While the Contract does not require such "show cause" notices to be issued to the Administrator it is wise for the Administrator to be alert to the circumstances that may predicate such action.

5.2 General

Any claim for breach of contract needs special attention. A breach of contract is defined as the failure of one party to fulfil an obligation under the Contract. A breach of contract can be minor and of little consequence. However a substantial breach of contract can lead to a termination of the Contract by either party depending on the circumstances of the breach.

5.3 Referenced clauses of General Conditions of Contract – Breach of Contract

Because of the potentially serious consequences, each "show cause" should be dealt with expeditiously by the Principal or the Contractor (as the case may be) and within the time periods detailed in Clause 44 *Default or Insolvency*.

5.4 Actions and Responsibilities

5.4.1 The Principal

If the Contractor commits a substantial breach and the Principal considers that damages may not be an adequate remedy, the Principal may give the Contractor a written notice to "show cause".

There are a range of actions that are considered a substantial breach by the Contractor (Clause 44.2 *Default by the Contractor*).

The notice must include the requirements of Clause 44.3 *Requirements of a Notice by the Principal to Show Cause* including the time and date by which the Contractor must reply. In addition, there are certain rights of the Principal, which should the Contractor fail to show reasonable cause, including:

- Take out of the hands of the Contractor the whole or part of the work remaining to be completed
- Terminate the Contract, or
- Suspending payment of the relevant items (in certain circumstances).

5.4.2 The Administrator

In the circumstances of the Principal issuing a “show cause” notice upon the Contractor and if the Contractor fails to show reasonable cause and the Principal either takes over the remaining work or terminates the Contract the Administrator is required to ascertain the cost incurred by the Principal in completing such work (Clause 44.6 *Adjustment on Completion of the Work Taken Out of the Hands of the Contractors*).

5.4.3 The Contractor

If the Principal commits a substantial breach and the Contractor considers that damages may not be adequate remedy the Contractor may give the Principal a written notice to “*show cause*”.

There are a range of actions that are considered a substantial breach by the Principal (Clause 44.7 *Default of the Principal*).

The notice must include the requirements of Clause 44.8 *Requirements of a Notice by the Contractor to Show Cause* including the time and date by which the Principal must reply.

If the Principal fails to show reasonable cause then the Contractor may suspend the whole or part of the works under the Contract.

The Contractor shall lift the suspension upon the Principal remedying the breach, or if within 20 business days after the date of suspension the breach is incapable of being remedied or the Principal fails to make other arrangements to the reasonable satisfaction of the Contractor, the Contractor may by notice, terminate the Contract. The Contractor is entitled to recover from the Principal any damages incurred by the Contractor by reason of the suspension.

6 Reference documents

- [CAS TIC Procedures \(CAP prefix\)](#)
- [CAS TIC Standard Forms \(CAF and SF prefix\)](#)
- [Transport Infrastructure Contract](#)

