



Australian
Institute of
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11 April 2025

Infrastructure Tasmania
Department of State Growth
Level 1, 2 Salamanca Square
Hobart TAS 7000

By email to: itas@stategrowth.tas.gov.au

Re: Review of Tasmanian Government Contract Documents: New Amended AS4000 Contract

Dear Infrastructure Tasmania and the Office of the Crown Solicitor,

The Tasmanian Chapter of the Australian Institute of Architects (the Institute) would like to thank you for the opportunity to review and provide feedback on Infrastructure Tasmania's procurement contracts and appreciate the opportunity for this second round of feedback. We are also appreciative for the additional time allowed for feedback.

About our organisation

The Australian Institute of Architects (the Institute), has been the peak body for the architectural profession in Australia for more than ninety years. It is an independent, national member organisation, with more than 13,700 members across Australia and overseas and 340 members in Tasmania.

- The Institute's vision is: Everyone benefits from good architecture.
- The Institute's purpose is: To demonstrate the value of architecture and support the profession.

At the time of this submission the Tasmanian Chapter President is Daniel Lane RAIA and the Tasmanian Executive Director is Jennifer Nichols.

Our feedback

Our Chapter has reviewed the New Amended AS4000 Contract document.

The feedback provided by the Institute is limited to the perspective of impacts on the rights/obligations of the architect, and the architect acting as the superintendent. Feedback has been provided in consultation with members who have experience in working with Australian Standard contracts.

The Institute is appreciative of the changes that have been made and feel the new version of the contract addresses most of the concerns previously identified and makes it a fairer document. Specific feedback on clauses is provided below.

Document: AS4000 MAJOR WORKS CONSTRUCT ONLY CONTRACT Amended from Australian Standard General conditions of contract

Document Ref: Business as Usual Version

Date: February 2025

No.	Clause Ref.	Comment
1.	1.1	Definitions - Legislative Requirement still notes in (b) fees for permits, approvals etc and (c) fees and charges applicable with the foregoing which could still cause confusion as to which party pays for Building/Plumbing Permit fees.
2.	5.5	Trusts and interest - if this contract has been prepared for government projects, clauses needs to be re-written to reflect that, as it implies the contract can be used by anyone. The Institute questions why government projects are allowing retention as security. This almost never happens - it is usually in the form of Bank Guarantees.
3.	8A.1	<i>Definitions</i> <i>Patent Error</i> <i>(b) - would have been readily apparent to a reasonably competent contractor prior to Date of Contract</i> <u>Comment:</u> this is too loose and will cause problems during the course of the WUC as there is potential for dispute between parties if the Principal takes the attitude that the Contractor should have seen the error as being 'reasonably competent'
4.	8B.3	Non Reliance - this clause is likely to cause problems in the fact that it shifts responsibility for errors or omissions on the 'Principals' supplied documents to the Contractor.
5.	8G.2	Public Audits - refers to 'if the Principal is a Public Entity'. The Institute questions whether the Government isn't automatically a Public Entity, and as such, why is the clause written in this way for a Government project.

6.	9.2	Subcontracting generally - this clause allows the Superintendent to reject a subcontractor proposed by the Contractor but allows the Contractor no recourse if they have to use another Subcontractor at a higher price.
7.	11D.1	Plan requirements - the timing for these reports will be in conflict with local government requirements which ask for these reports prior to submitting for a Building Permit.
8.	16	This gives the option of the Contractor insuring the Works, which has not happened for building works in the past. The Institute questions whether this is a new approach, or will Government arrange insurances like present under AS2124.
9.	20.1	General - refers to 'the Superintendent is performing Agency Function....' is confusing and Agency Function needs a description in 1.1 Definitions so the Contractor has a better understanding of the Superintendents function (or limiting of).
10.	20B.5 (b)	The Institute suggests that it should not be expected for a Contractor to continue if the Superintendent does not reply to an RFI. The Institute suggests that the clause is re-written to better allow the parties to perform under the contract.
11.	25.3	Deemed Variation - clause does not make sense.
12.	34.7	Liquidated damages - clause notes 'shall' which implies it is mandatory to impose liquidated damages, however the Institute notes that this is rare in government building projects.
13.	General	A number of references in the contract note 'Error Reference source not found'.
14.	General	In a number of instances the term 'promptly' is used for response times for various parties associated with the contract. The Institute questions why a definitive time cannot be given.

The Institute understand that this contract has been written for major projects, and the Institute's members are interested to see how this will be used, and modified, by various government departments for building projects.

As with any changes, the impacts of these are often not realised until things are put into practice. The Institute is appreciative of the current review of the suite of Tasmanian Government contracts and suggests that ongoing reviews could take place in order to identify issues that may arise once the new amended contracts are put into use.

The Institute notes that in the correspondence with Infrastructure Tasmania about this review, in the next steps, there was indication that the Office of the Crown Solicitor will schedule meetings to discuss any residual concerns. The Institute would value the opportunity to meet to discuss the feedback below further.

Thank you for consulting with the industry and professions regarding this part of the Tasmanian Government's procurement process. The Institute believes a collaborative

approach will help to enable the best outcomes for our state. We look forward to seeing the outcome of this consultation.

Kind regards,

A handwritten signature in black ink, appearing to read 'Daniel Lane', with a long horizontal stroke extending to the right.

Daniel Lane
President, Tasmanian Chapter
Australian Institute of Architects

A handwritten signature in black ink, appearing to read 'Jennifer Nichols', written in a cursive style.

Jennifer Nichols
Executive Director, Tasmanian Chapter
Australian Institute of Architects